

OPEN MEETING ITEM

COMMISSIONERS
SUSAN BITTER SMITH - Chairman
BOB STUMP
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ARIZONA CORPORATION COMMISSION RECEIVED

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DATE: NOVEMBER 23, 2015

AZ CORP COMMISSION
DOCKET CONTROL

DOCKET NO.: W-03514A-12-0007

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Sarah Harpring. The recommendation has been filed in the form of an Opinion and Order on:

J. ALAN SMITH VS. PAYSON WATER CO., INC./BROOKE UTILITIES, INC.
(COMPLAINT)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

DECEMBER 2, 2015

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

DECEMBER 8, 2015 AND DECEMBER 9, 2015

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

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JODI JERICH
EXECUTIVE DIRECTOR

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 SUSAN BITTER SMITH - Chairman
4 BOB STUMP
5 BOB BURNS
6 DOUG LITTLE
7 TOM FORESE

8 J. ALAN SMITH,
9 COMPLAINANT,
10 VS.
11 PAYSON WATER CO., INC./BROOKE
UTILITIES, INC.,
RESPONDENT.

DOCKET NO. W-03514A-12-0007

DECISION NO. _____

12 OPINION AND ORDER

13 DATES OF HEARING: March 9, 2012; August 7, 2012; September 28, 2012;
14 March 14, 2013; July 10, 2013; October 30, 2013; April
21, 2014; and November 17, 2014 (Procedural
Conferences); January 15 and 30, 2015 (Evidentiary
Hearing)

15 PLACE OF HEARING: Phoenix, Arizona

16 ADMINISTRATIVE LAW JUDGE: Dwight D. Nodes¹

17 APPEARANCES: Mr. J. Alan Smith, Pro Se;

18 Mr. Jason Williamson, President, on behalf of Payson
19 Water Company, Inc.; and

20 Mr. Brian E. Smith, Staff Attorney, Legal Division, on
21 behalf of the Utilities Division of the Arizona
Corporation Commission.

22 **BY THE COMMISSION:**

23 This case concerns a Formal Complaint ("Complaint") filed against Payson Water Co., Inc.
24 ("Payson") and Brooke Utilities, Inc. ("Brooke") by J. Alan Smith, concerning water utility service
25 provided by Payson in its Mesa del Caballo System ("MDC"). Mr. Smith's allegations focus on the
26 implementation of a Water Curtailment Plan Tariff ("Curtilment Tariff") and a Water Augmentation

27 _____
28 ¹ Chief Administrative Law Judge Dwight D. Nodes presided over all proceedings in this matter. The Recommended
Opinion and Order was written by Administrative Law Judge Sarah N. Harpring.

1 Surcharge ("WAS") authorized by the Commission in Decision No. 71902 (September 28, 2010).²

2 **DISCUSSION**

3 **I. BACKGROUND**

4 **Payson**

5 Payson is an Arizona public service corporation engaged in providing water utility services to
6 approximately 1,114 service connections through eight independent water systems in Gila County.
7 (Decision No. 74175 (October 25, 2013) at 4-5.)³ The eight systems are Geronimo Estates, Deer
8 Creek, Meads Ranch, Whispering Pines, Flowing Springs, Gisela, East Verde Park, and MDC.
9 (Decision No. 74567 (June 20, 2014) at 15.)⁴ From 1996 through May 31, 2013, Payson was wholly
10 owned by Brooke, which also owned other water utilities.⁵ (*Id.* at 14-15.) Robert Hardcastle served
11 as President for both Payson and Brooke. (*Id.*) Since June 1, 2013, Payson has been owned by JW
12 Water Holdings, LLC ("JW"), a Colorado LLC managed by Jason Williamson. (*Id.*) According to
13 Mr. Williamson, Brooke and Mr. Hardcastle have no interest in and are no longer affiliated in any
14 way with Payson. (*Id.* at 14.)

15 **Mr. Smith**

16 Mr. Smith is a resident in the MDC service area and has been renting the home in which he
17 and his wife live there for a number of years. Although Mr. Smith pays the water bill for Payson's
18 service each month, he is not listed as the customer in Payson's records. Payson's records show
19 Joanna Hutchison,⁶ the owner of the home, as the customer for the account. Payson sends the water
20 bills to "Joanna Hutchison c/o Alan Smith" at the address for the home rented by Mr. Smith. Mr.
21 Smith pays the water bills in cash at the Arizona Public Service ("APS") office in Payson, Arizona.

22 **Related Cases**

23 In Decision No. 71902, issued in Docket Nos. W-03514A-10-0116 *et al.* ("WAS Docket"),
24 the Commission considered Payson's requests for authority to implement a WAS/emergency rate

25 ² Official notice is taken of this Decision.

26 ³ Official notice is taken of this Decision.

27 ⁴ Official notice is taken of this Decision.

28 ⁵ In Decision No. 60972 (June 19, 1998), seven Brooke subsidiaries were granted authority to transfer their assets and corresponding water utility CC&Ns to seven (mostly new) water companies, including Payson, for purposes of having the water company operations organized geographically. Official notice is taken of this Decision.

⁶ Ms. Hutchison lives in North Carolina.

1 tariff and a revised Curtailment Tariff for MDC. Payson based its requests on water shortages in
 2 MDC and the costs associated with hauling water to augment supply,⁷ as Payson asserted that it had
 3 incurred a cost of \$59,137 to haul water to MDC during the summer of 2009. Mr. Hardcastle
 4 indicated that Payson could not continue to absorb the cost of water hauling for MDC. The
 5 Commission found that Payson had inadequate storage capacity and that its nine wells had poor water
 6 production, resulting in an insufficient water supply during the peak summer months even when the
 7 wells were producing at maximum capacity. The Commission concluded that Payson was facing an
 8 “emergency” and authorized Payson to recover its water hauling expenses by means of a WAS based
 9 on the prior month’s cost of hauling water and on each customer’s water usage for the month,⁸ with
 10 the following conditions: (1) the WAS tariff could not be applied retroactively; (2) the WAS tariff
 11 would be interim, subject to refund, and effective only until permanent rate relief was granted by the
 12 Commission; (3) the WAS tariff would be effective only from May 1 through September 30 of any
 13 calendar year; (4) the WAS tariff would be effective only for MDC; (5) and the WAS tariff would
 14 solely cover documented expenses for hauling water to MDC. In addition, the Decision required
 15 Payson to file a revised rate schedule reflecting the WAS tariff within 30 days after the Decision; to
 16 mail its customers notice of the WAS tariff and its effective date, in a form approved by Staff, at least
 17 15 days before implementation; to file a full rate case within 12 months after the effective date of the
 18 Decision; to file a financing application concurrently with the rate application if Payson believed debt
 19 would be needed to solve MDC’s water shortage problem; and to post a bond in the form of a \$100
 20 cashier’s check. Payson was also authorized to implement a revised Curtailment Tariff for MDC,
 21 which was included as Exhibit A to the Decision. The WAS tariff was not attached to the Decision.

22 In Decision No. 72679 (November 17, 2011),⁹ issued in the WAS Docket, the Commission
 23 extended the deadline for filing of Payson’s permanent rate application to March 30, 2012.

24 On January 11, 2012, in Docket No. W-03514A-12-0008 (“Gehring Docket”), J. Stephen
 25

26 ⁷ Payson was exploring alternative solutions to the MDC water shortages—drilling a new deep well for MDC or
 27 connecting MDC to a future C.C. Cragin Reservoir water pipeline that would be serving the Town of Payson’s water
 28 system in the future.

⁸ The Decision found that Staff was unable to determine the financial impact of the WAS because each month’s WAS
 would be based on actual customer water usage and the amount of water hauled.

⁹ Official notice is taken of this Decision.

1 Gehring and Bobby and Lois Jones (collectively "Complainants"), customers receiving water utility
2 service from Payson in the MDC service area, filed a Formal Complaint against Payson/Brooke,
3 alleging, *inter alia*, that, during the period from May 1, 2011, through October 30, 2011,
4 Payson/Brooke had acted both negligently and fraudulently in its billing of MDC customers under the
5 WAS Tariff. Complainants alleged that Payson/Brooke's actions violated specific Commission
6 statutes and rules as well as Decision No. 71902 and requested multiple forms of relief.

7 Following many filings and one procedural conference, an evidentiary hearing was held in the
8 Gehring Docket on June 26 and 27, 2012. At the hearing, Complainants, Payson, and Staff provided
9 testimony and documentary evidence. Mr. Smith appeared as a witness for Complainants. At the
10 conclusion of the hearing, the record was considered closed, pending submission of a
11 recommendation to the Commission.

12 The evidentiary record in the Gehring Docket includes examination of documentation used to
13 support the WAS and includes documentary evidence and testimony concerning Payson's operations
14 while under Brooke's ownership. Administrative notice of the evidentiary record in the Gehring
15 Docket was taken at the August 7, 2012, proceeding in this matter.

16 On November 1, 2012, Payson filed a second request for an extension of time, until May 1,
17 2013. In Decision No. 73774 (March 21, 2013),¹⁰ issued in the WAS Docket, the Commission
18 denied this request and ordered Payson to file its permanent rate application within 30 days.

19 On April 22, 2013, Payson filed a permanent rate application in Docket No. W-03514A-13-
20 0111 ("Rates Docket").

21 On May 27, 2013, Payson filed, in Docket No. W-03514A-13-0142 ("Financing Docket"), an
22 application requesting permission to incur debt and to encumber real property and utility plant as
23 security for the debt, which was proposed to be a loan from the Water Infrastructure and Finance
24 Authority of Arizona ("WIFA"), in an amount not to exceed \$1,238,000, for the purpose of funding
25 an interconnection between MDC and the C.C. Cragin Pipeline.

26
27
28 ¹⁰ Official notice is taken of this Decision.

1 Effective June 1, 2013, JW acquired Payson and several other utilities owned by Brooke.¹¹

2 On August 26, 2013, the Rates Docket and Financing Docket were consolidated
3 ("Consolidated Dockets"). In September 2013, a bifurcated procedural schedule was adopted to
4 allow for expedited consideration of a portion of the requested WIFA financing authority--\$275,000
5 that would be used to fund the first phase of the interconnection, which was to run from the Town
6 water distribution system to MDC.

7 On October 25, 2013, in the Consolidated Dockets, the Commission issued Decision No.
8 74175,¹² authorizing Payson to borrow up to \$275,000 from WIFA for the purpose of financing the
9 construction of a new water transmission line to connect MDC to the Town's water system;
10 authorizing Payson to implement a WIFA loan surcharge mechanism for MDC; requiring Payson,
11 within 15 days of closing on the approved WIFA loan, to file an application for elimination of the
12 WAS tariff; and requiring Payson to provide its customers notice of the changes.

13 On May 22, 2014, in the Consolidated Dockets, in response to a Staff proposal, the
14 Commission issued Decision No. 74484,¹³ granting Payson's request to cancel the WAS tariff for
15 MDC and authorizing Payson to implement an interim emergency purchased water adjustment
16 mechanism ("PWAM") designed to allow Payson to pass through to customers the costs of water
17 obtained through the newly completed first phase of the Cragin pipeline.¹⁴

18 On June 20, 2014, in the Consolidated Dockets, the Commission issued Decision No.
19 74567,¹⁵ approving permanent rates and charges for Payson and, *inter alia*, making permanent the
20 debt surcharge and PWAM previously approved for MDC in Decision No. 74484.

21 **II. PROCEDURAL HISTORY**

22 On January 10, 2012, Mr. Smith filed a Complaint against Payson/Brooke.¹⁶

23 ¹¹ Mr. Williamson has testified that neither Brooke nor Mr. Hardcastle have any interest in Payson, that Mr. Williamson
24 does not have an ongoing business or personal relationship with Mr. Hardcastle, and that Mr. Hardcastle is no longer
affiliated with Payson in any capacity. (Decision No. 74567 at 14.)

25 ¹² Official notice is taken of this Decision.

26 ¹³ Official notice is taken of this Decision.

27 ¹⁴ The Commission concluded that without a Commission-authorized PWAM, Payson would not be able to recover the
costs of water purchased from the Town and transported to MDC through the new pipeline because Payson had
previously been authorized to pass through only the water augmentation costs associated with hauling purchased water to
MDC.

28 ¹⁵ Official notice is taken of this Decision.

¹⁶ Mr. Smith has argued that Payson and Brooke should be treated as one entity.

1 On January 10, 2012, the Commission's Docket Control Center sent a copy of the Complaint
2 to Payson, by Certified Mail.

3 On February 2, 2012, Payson filed an Answer to Formal Complaint from Smith; Motion to
4 Dismiss. Payson took the position that Mr. Smith was not a customer of Payson because he was a
5 renter and not named on the account.

6 On February 16, 2012, Mr. Smith filed a Reply to Respondent's Answer, disputing his alleged
7 non-customer status.

8 On February 23, 2012, a Procedural Order was issued scheduling a procedural conference to
9 be held on March 9, 2012.

10 On March 9, 2012, the procedural conference was held as scheduled, with Mr. Smith
11 appearing pro se, Payson appearing through Mr. Hardcastle, and the Commission's Utilities Division
12 ("Staff") appearing through counsel. Payson continued to characterize Mr. Smith as a non-customer,
13 asserting that he was only a contact listed for the account held by a customer with the last name
14 Hutchison. Mr. Smith continued to assert that he was a customer and had been since 2007, because
15 he is responsible to pay the water bill under his arrangement with the landlord, Ms. Hutchison. The
16 possibility of mediation was discussed, with Mr. Smith indicating that he did not believe mediation
17 would resolve all of the issues in the Complaint. It was determined that the parties would discuss, try
18 to reach agreement on, and make a filing regarding proposed procedural dates.

19 On March 29, 2012, Payson filed a Motion to Dismiss based upon the argument that Mr.
20 Smith was not a customer and thus lacked standing to bring the Complaint.

21 On March 30, 2012, Payson filed a Motion to Quash Brooke Utilities, Inc. as a Party to the
22 Complaint, arguing that Brooke functioned only as a holding company for Payson and numerous
23 other Arizona public service corporations.

24 On April 3, 2012, Mr. Smith filed a Response and Objection to Respondents Motion to Quash
25 Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny. Mr. Smith argued that Brooke
26 was a public service corporation that owned and operated Payson. Mr. Smith also filed a Response
27 and Objection to Respondents Motion to Dismiss and Motion to Deny, citing A.R.S. § 40-246(A),
28 which allows complaint to be made against a public service corporation by any person or association

1 of persons.

2 On April 9, 2012, Payson filed (1) a Reply by Payson Water Co. to Complainant's Response
3 and Objection to Respondents Motion to Quash Brooke Utilities Inc. as a Party to the Complaint and
4 (2) a Reply to Complainant's Response to Payson Water Co.'s Motion to Dismiss and Motion to
5 Deny. Payson argued that A.R.S. § 40-246 restricts complaints made as to the reasonableness of any
6 rates or charges, allowing them to be made only by the Commission itself.

7 On April 13, 2012, Mr. Smith filed (1) a Response and Objection to Respondents Motion to
8 Quash Brooke Utilities, Inc. as a Party to the Complaint and Motion to Deny and (2) an Objection to
9 Respondent's Reply to Complainant's Response to Respondents Motion to Dismiss and Motion to
10 Deny.

11 On April 20, 2012, Staff filed Notice that Mr. Martin Zabala of Martin's Trucking had
12 reported to Staff that he had been duly served with a subpoena, had no records relevant to the
13 subpoena, and had indicated to Mr. Gehring that he had no such records. According to Staff, Mr.
14 Zabala stated that he had been assisting Pearson Trucking as a temporary driver and neither had nor
15 had access to the documents and information requested.

16 On May 3, 2012, Staff filed a Status of Mediation, reporting that settlement had not been
17 reached between the parties and requesting that a hearing be set.

18 On June 18, 2012, a Procedural Order was issued scheduling a hearing to be held in this
19 matter on August 7, 2012, and requiring and establishing dates for parties' pre-filed testimony.

20 On July 16, 2012, Mr. Smith filed a Notice of Complainant's Initial Discovery and Disclosure
21 ARCP Rule 26.1 and AAC Rule R14-3-109 et. seq. Among other things, Mr. Smith provided a list of
22 witnesses including Mr. Gehring, Mr. Hardcastle, three members of Staff, James Pearson, David
23 Allred, and Mike Ploughe.

24 On July 17, 2012, Mr. Smith filed a Notice of Complainant Smith Filing His "Direct
25 Testimony" per Procedural Order of June 18, 2012.

26 On July 23, 2012, Mr. Smith filed a Notice of Complainant's Second Discovery and
27 Disclosure ARCP Rule 26.1 and AAC Rule R14-3-109 et seq.

28 On July 30, 2012, Staff filed a Staff Response characterizing Mr. Smith as a customer of

1 Payson, briefly recounting informal complaints filed by Mr. Smith and their outcomes, and indicating
2 that mediation had been unsuccessful.

3 On July 30, 2012, Payson filed Rejoinder Testimony of Payson Water Co., Inc.

4 On August 1, 2012, Payson filed a Supplemental Motion to Quash Brooke Utilities Inc. as a
5 Party to the Complaint, reiterating the arguments presented previously and adding that the
6 Commission had excluded Brooke from a separate Formal Complaint docket involving Payson.¹⁷

7 On August 1, 2012, Mr. Smith filed (1) a Motion to Compel Jim Pearson and Pearson Water
8 Co. to Comply with Subpoenas Served on Him/Them on July 26, 2012 by a Process Server; (2) a
9 Motion to Compel Respondents to Comply with Complainant's 1st Set of Data Requests; (3) a Notice
10 of Complainant's Third Discovery and Disclosure ARCP Rule 26.1 and AAC Rule R14-3-109 et
11 seq.; and (4) a Notice of Service of Process Subpoenas on Jim Pearson and Pearson Water Co.

12 On August 2, 2012, Payson filed a Notice of Initial Disclosure including, among other things,
13 a list of witnesses including Mr. Allred, Mr. Ploughe, and two members of Staff.

14 On August 6, 2012, Payson filed a Supplemental Motion to Dismiss based on Mr. Smith's
15 alleged non-customer status and the A.R.S. § 40-246(A) restrictions on complaints concerning the
16 reasonableness of rates or charges.

17 Early on August 7, 2012, Dennis B. Tresca filed an Application for Intervention/Motion to
18 Intervene Pursuant to AAC R14-3-105 et seq., asserting that he was a property owner and Payson
19 customer in the MDC service area and that he had been adversely affected by the WAS and revised
20 Curtailment Tariff.¹⁸

21 On August 7, 2012, the hearing for this matter convened as scheduled, with Mr. Smith
22 appearing pro se, Payson appearing through Mr. Hardcastle, and Staff appearing through counsel. At
23 the outset, a ruling was made on Payson's Supplemental Motion to Quash Brooke Utilities as a Party
24 to the Complaint, allowing Mr. Smith's Complaint to proceed against Payson alone, although the
25 Commission could pursue a remedy against Brooke at a later time if deemed necessary. Further,
26 Payson's Supplemental Motion to Dismiss was denied because A.R.S. § 40-246(A) allows a
27

17 The case referenced was the Gehring Docket.

18 Mr. Tresca did not participate further in this matter and was not granted intervention.

1 complaint to be made by any person, not just a customer of record. Additionally, administrative
2 notice was taken of the entire evidentiary record from the Gehring Docket.¹⁹ Mr. Smith's pending
3 Motion to Compel regarding Mr. Pearson was also discussed, with Mr. Smith maintaining that Mr.
4 Pearson was a necessary witness.²⁰ Mr. Smith then moved to continue the hearing for 60 to 90 days
5 because he had consulted with an attorney, Michael Harper, whom he desired to retain as his
6 representative in this matter and, additionally, had been unable to obtain Mr. Pearson's compliance
7 with subpoenas to appear as a witness or produce hauling records. Payson objected to the motion,
8 and Staff did not object but indicated that it was ready to go forward. In order to allow Mr. Smith a
9 full and fair opportunity to present his case, a 90-day continuance was granted, and the parties were
10 directed to file acceptable alternative hearing dates before the end of the continuance.

11 On August 8, 2012, Mr. Smith filed a Notice of Service of Process Subpoenas on Robert T.
12 Hardcastle, Brooke Utilities, Inc., and Payson Water Co.

13 On August 13, 2012, Payson filed (1) an Objection to Application of Dennis B. Tresca for
14 Intervention into the Docket, asserting that Mr. Tresca's intervention would not add any material
15 facts or circumstances not already included in the docket and would complicate an already complex
16 docket; (2) an Objection to Complainant's Fourth Discovery and Disclosure; and (3) a Motion to
17 Dismiss a Portion of the Complaint, requesting that the Commission dismiss that portion of Mr.
18 Smith's Complaint related to (a) improper notice of disconnection of service and (b) wrongful
19 disconnection of service, while allowing other allegations made by Mr. Smith in the Complaint to be
20 heard and addressed at a future hearing. Payson asserted that Mr. Smith's allegations regarding (a)
21 and (b) had been resolved through an account adjustment in an informal complaint process that had
22 been closed by the Commission as of December 14, 2011. Payson included documentation related to
23 the informal complaint, which had been filed by Mr. Smith on June 9, 2011.

24 On August 20, 2012, Mr. Smith filed (1) a Response to Respondents Objection to Tresca
25 Application for Intervention and Motion to Deny; (2) a Response to Respondents Objection to

26 ¹⁹ Administrative notice was taken of "the entire record from that prior proceeding, including all the exhibits admitted
27 and in evidence, as well as the transcripts from that proceeding." (Tr. August 7, 2012, at 9.) No party objected to the
taking of such notice.

28 ²⁰ There was discussion, but no resolution, regarding the Commission's ability to enforce a subpoena when the witness
refuses to comply.

1 Complainant's 4th Discovery and Disclosure and His Motion to Deny; and (3) a Response to
2 Respondents Motion to Dismiss a Portion of the Complaint and Motion to Deny.

3 On August 20, 2012, Payson filed a Notice of Timely Compliance with Subpoena.

4 On August 23, 2012, Payson filed a Reply to Complainant's Response to Respondents Motion
5 to Dismiss a Portion of the Complaint.

6 On September 4, 2012, Mr. Smith filed a Response to Respondents Reply to Complainant's
7 Challenge to Motion to Dismiss a Portion of the Complaint.

8 On September 6, 2012, Payson filed a Motion to Quash Subpoena, regarding an additional
9 Administrative Subpoena Duces Tecum directed to Mr. Hardcastle and/or Mr. Allred and
10 Payson/Brooke.

11 On September 12, 2012, Mr. Smith filed a Notice of Service of Process Subpoenas on Robert
12 T Hardcastle, Brooke Utilities, Inc., and Payson Water Co.

13 On September 13, 2012, Mary E. Hansen filed an Application for Intervention/Motion to
14 Intervene Pursuant to AAC R14-3-105. Ms. Hansen identified herself as a property owner, well
15 owner, and Payson/Brooke customer in the MDC service area. Ms. Hansen asserted that her well had
16 been identified as a Well Sharing Agreement ("WSA") Well in Payson's Annual Reports since 2002,
17 although with an incorrect well number, and that her well had never been under a written WSA with
18 Payson/Brooke.²¹

19 On September 13, 2012, Mr. Smith filed a Response and Objection to Respondent's Motion
20 to Quash Subpoena.

21 On September 17, 2012, a Procedural Order was issued scheduling a procedural conference
22 on September 28, 2012, and ordering counsel for Mr. Smith to file a Notice of Appearance before the
23 procedural conference, to attend the procedural conference and all subsequent hearings, and to file all
24 future pleadings as Mr. Smith's counsel.

25 On September 24, 2012, Mr. Smith filed a Motion to Initiate an Action in the Superior Court
26 to Compel Jim Pearson, Pearson Transport, Robert T. Hardcastle, Brooke Utilities, Inc., and Payson
27

28 ²¹ Ms. Hansen did not participate further in this matter and was not granted intervention.

1 Water Co. to Comply with the Subpoenas Served Upon Them.

2 On September 28, 2012, the procedural conference was held as scheduled, with Mr. Smith
3 represented by counsel,²² Payson represented by Mr. Hardcastle, and Staff represented by counsel.
4 Initially, the parties were directed to discuss scheduling and discovery issues. Subsequently, the issue
5 of subpoena compliance was discussed, with Staff suggesting that before enforcement of the Pearson
6 subpoena was sought, it might be worthwhile for Mr. Smith's counsel to contact Mr. Pearson. Mr.
7 Smith's counsel concurred, and Staff and Mr. Smith were directed to work toward obtaining Mr.
8 Pearson's compliance with the subpoena and to escalate the issue to the Administrative Law Judge if
9 needed. Mr. Smith's counsel was directed to file a status update in 30 days. Additionally, the
10 administrative notice previously taken of the evidentiary record from the Gehring Docket was briefly
11 discussed.

12 On October 3, 2012, Michael J. Harper and the firm of Walker & Harper, PC filed a Notice of
13 Appearance as counsel for Mr. Smith.

14 No status update was filed.

15 On January 2, 2013, Payson filed a Motion to Dismiss based upon the length of time since
16 Mr. Smith's request for a 90-day continuance had been granted.

17 On January 10, 2013, Mr. Smith filed a Notice of Submission of Demand for Compliance
18 with Subpoenas and Request for Issuance of Procedural Order Directing Compliance Proceedings in
19 the Superior Court. The filing requested that the Commission direct Staff to commence enforcement
20 proceedings in Maricopa County Superior Court as authorized by the authority set forth in Mr.
21 Smith's September 24, 2012, Motion to Initiate an Action in the Superior Court to Compel Jim
22 Pearson, Pearson Transport, Robert T. Hardcastle, Brooke Utilities, Inc. and Payson Water Co. to
23 Comply with the Subpoenas Served Upon Them. The Notice included a copy of a November 5,
24 2012, letter sent by Mr. Smith's counsel to Mr. Pearson, which had been sent by both United Parcel
25 Service overnight delivery and U.S. Postal Service Certified Mail, return receipt requested. Mr.
26 Smith also filed a Response to Motion to Dismiss, asserting that the information sought through the

27 _____
28 ²² Counsel for Mr. Smith had attempted to file a Notice of Appearance, but had not sent enough copies to the
Commission's Docket Control Center.

1 subpoenas was critical and requesting that a procedural conference be scheduled to discuss both the
2 issues related to the subpoenas and the establishment of a hearing date.

3 On February 27, 2013, a Procedural Order was issued scheduling a procedural conference for
4 March 14, 2013. The Procedural Order also described A.R.S. §§ 40-244(B) and 40-424(A) and
5 concluded that it would be premature to order Staff to file an action in Superior Court until the
6 question of Mr. Pearson's payment under A.R.S. § 40-244(B) was resolved and notice and a hearing
7 were held to determine whether Mr. Pearson was in contempt under A.R.S. § 40-424(A).

8 On February 28, 2013, Mr. Smith filed a Renewed Request for Procedural Conference.

9 On March 14, 2013, a procedural conference was held as scheduled, with Mr. Smith and Staff
10 appearing through counsel and Payson appearing through Mr. Hardcastle. Mr. Smith requested an
11 order finding Mr. Pearson in contempt and ordering Mr. Pearson to provide the documents outlined in
12 the subpoenas or face a civil arrest warrant or further orders from the Commission or the Superior
13 Court. Mr. Smith clarified that only the documents were sought at that time, although a deposition
14 could be desirable if possible.

15 On March 18, 2013, Mr. Smith filed a Motion to Compel Responses to Data Requests and
16 Subpoenas Duces Tecum, requesting that the Commission issue an order compelling Payson to
17 provide documents in response to two Subpoenas Duces Tecum and a set of Data Requests served in
18 this matter. Mr. Smith alleged that Payson had not issued even one document in response.

19 On March 20, 2013, an Order Compelling Compliance with Subpoena Duces Tecum was
20 issued ordering Jim Pearson and/or Pearson Transport/Pearson Water immediately to provide copies
21 of all documents described in the Subpoena Duces Tecum signed by the Commission's Executive
22 Director on July 19, 2012, and served on July 25, 2012, by mailing the documents to Mr. Smith's
23 counsel or providing them in another form and manner acceptable to Mr. Smith. The Order further
24 provided that failure to comply could result in the issuance of a Civil Contempt Order by the
25 Commission, imposition of fines under A.R.S. § 40-424, or other penalties the Commission might
26 determine appropriate to enforce compliance.

27 On March 26, 2013, Payson filed a Reply to Complainant's Motion to Compel Responses to
28 Data Requests and Subpoena Duces Tecum, arguing that Complainant's Motion to Compel should be

1 denied, but providing numerous documents as attachments.

2 On April 12, 2013, Staff filed a Status Update stating that Staff had contacted and spoken to
3 Mr. Pearson by telephone. According to Staff, Mr. Pearson felt that he had supplied all the
4 documents in the Gehring Docket, stated that he had misplaced some of the documents and was
5 trying to locate them, stated that he had sent a fax to Mr. Smith's counsel, and provided a copy of the
6 document faxed to Mr. Smith's counsel. Staff stated that Mr. Pearson had been directed to cooperate
7 and to contact Mr. Smith personally or through counsel.

8 On June 10, 2013, Mr. Smith filed a Renewed Motion to Compel Documents and Information
9 Requested by Subpoena and Data Requests and Motion for Order Requiring Jim Pearson to Fully
10 Respond to Subpoena Duces Tecum and Request for Hearing on Motions. Mr. Smith asserted that
11 Payson still had not provided numerous documents requested in the Subpoenas of August 2 and 17,
12 2012, and the Data Requests of July 16, 2012, and that Mr. Pearson had not contacted Mr. Smith's
13 counsel since Staff's April 12, 2013, Status Update, and had not provided any documents whatsoever
14 in response to the Subpoena. Mr. Smith requested that the Motions be set for a hearing.

15 On June 26, 2013, a Procedural Order was issued scheduling a procedural conference for July
16 10, 2013; ordering Jim Pearson and/or Pearson Transport/Pearson Water, by July 5, 2013, to provide
17 Mr. Smith's counsel with copies of all documents in his/their possession described in the Subpoena
18 Duces Tecum signed by the Commission's Executive Director on July 19, 2012; and providing that
19 failure to comply with the Procedural Order could result in issuance of a Civil Contempt Order by the
20 Commission, imposition of fines under A.R.S. § 40-424, and other penalties the Commission
21 determined appropriate to enforce compliance.

22 On July 10, 2013, Brooke filed a Motion to Dismiss Brooke Utilities, Inc. as a Party to this
23 Docket, stating that on May 31, 2013, Brooke had sold all of its ownership interests in Payson to JW
24 and thus "no longer ha[d] any ownership interest, common owners, common members of the Board
25 of Directors, common officers, financial control or responsibility, operational control, and regulatory
26 responsibility for Payson." Brooke stated that because of its status as a non-regulated non-public
27 service corporation not subject to the Commission's jurisdiction, and its no longer having any
28 affiliation whatsoever with Payson, Brooke must be dismissed as a party to this matter. Brooke

1 further stated that it would no longer participate in this matter “unless compelled by a proper
2 authority having the proper jurisdiction and authority to do so.”

3 On July 10, 2013, the procedural conference was held as scheduled, with Mr. Smith, Payson,
4 and Staff appearing through counsel and Brooke appearing through Mr. Hardcastle. Brooke asserted
5 that it should be dismissed from the case because it no longer had an ownership, financial,
6 operational, personnel, or other type of interest in Payson. Payson asserted that it had been acquired
7 by Pivotal Utilities, which is run by Mr. Williamson.²³ Mr. Smith requested issuance of an order
8 directing Brooke and/or Payson to comply with Mr. Smith’s discovery request by a date certain and
9 of an order finding Mr. Pearson in contempt. It was determined that the parties would try to resolve
10 their discovery dispute informally and that if the parties were unsuccessful, Payson would file a
11 formal response to Mr. Smith’s Motion to Compel by July 24, 2013. It was also determined that an
12 action would be brought before the Commission to seek enforcement of the Subpoena if counsel for
13 Payson was unable to obtain the requested documents from Mr. Pearson.

14 On July 12, 2013, a Notice of Appearance was filed by Patrick J. Black, Fennemore Craig,
15 P.C., as counsel for Payson.

16 On July 23, 2013, Payson filed a Status Report–Discovery advising that Payson’s counsel
17 lacked sufficient information to respond substantively to Mr. Smith’s outstanding Motion to Compel
18 because Payson’s counsel had not been able to discuss the outstanding discovery dispute with Mr.
19 Smith’s counsel.

20 On July 24, 2013, Mr. Smith filed a Request for Extension Re Response to Brooke Utilities,
21 Inc. Motion to Dismiss Brooke Utilities, Inc. as a Party to this Docket, requesting an extension of 60
22 days to respond to the Motion to Dismiss because of a scheduling conflict.

23 On July 25, 2013, Mr. Smith filed a Notice of Errata stating that the Request for Extension
24 filed on July 24, 2013, should have requested only a 10-day extension.

25 On August 5, 2013, Mr. Smith filed a Response to Motion to Dismiss Brooke Utilities, Inc. as
26 a Party to this Docket, asserting that the Motion should be denied because Brooke served as the alter

27 _____
28 ²³ This appears to have been a misstatement, as the record indicates Payson was purchased by JW, not by Pivotal Utilities.

1 ego of Payson and remained a necessary party to this matter.

2 On August 21, 2013, Payson filed a Response to Complainant's Motion to Compel, stating
3 that certain invoices requested by Mr. Smith were unavailable and appeared to have nothing to do
4 with Payson; that Payson had previously provided a response or timely objection to most of the
5 outstanding data requests; that several data requests concerned actions by Payson under its prior
6 owner and about which the new owner would have no knowledge; and that some of the data requests
7 appeared to go far beyond the facts necessary to establish whether Payson had calculated the
8 surcharge correctly and properly billed the correct amount to Mr. Smith. Payson requested that it be
9 deemed to have completed its responses to Mr. Smith's outstanding discovery requests and that the
10 discovery dispute no longer preclude this matter from moving forward.

11 On September 9, 2013, Mr. Smith filed a Reply in Support of Motion to Compel Documents
12 and Information Requested by Subpoena and Data Requests and Request for Sanctions, asserting that
13 Payson had displayed a dismissive attitude toward Mr. Smith's data requests and subpoenas and that
14 Mr. Smith had recently obtained a copy of a separate filing, made in a different docket in July 2012
15 by Mr. Hardcastle and Payson, which included two of the Pearson invoices Payson had characterized
16 as unavailable. Mr. Smith requested that his Motion to Compel be granted in its entirety and that a
17 hearing be set to address appropriate orders and sanctions.

18 On September 23, 2013, a Procedural Order was issued scheduling a procedural conference
19 for October 7, 2013; requiring Payson to be prepared to provide copies of all documents requested by
20 Mr. Smith in prior data requests, including those in the possession of Brooke; requiring Payson to
21 make all reasonable efforts to acquire the documents in the possession and control of Mr. Pearson;
22 requiring the parties to undertake settlement discussions regarding the discovery dispute and the
23 Complaint as a whole and to be prepared to discuss their efforts at the procedural conference;
24 requiring the parties to discuss and to be prepared to offer proposed hearing dates; and requiring Staff
25 to be prepared to discuss, with specificity, the actions it intended to take to enforce the prior
26 subpoenas issued to Mr. Pearson related to hauling logs and associated documents.

27 On September 26, 2013, Payson filed a Request to Reschedule Procedural Conference, stating
28 that the parties had not yet engaged in settlement discussions and that Payson's counsel had a

1 scheduling conflict. Payson stated that Staff did not object to the Request.

2 On October 1, 2013, a Procedural Order was issued vacating the procedural conference
3 scheduled for October 7, 2013, and scheduling a procedural conference for October 24, 2013.

4 On October 1, 2013, Staff filed a Request to Reschedule Procedural Conference, requesting
5 that the procedural conference be rescheduled for October 29 or 30, 2013, and stating that the parties
6 would be meeting on October 15, 2013, to engage in discussions regarding resolution of the
7 discovery dispute and Complaint.

8 On October 9, 2013, a Procedural Order was issued vacating the procedural conference
9 scheduled for October 24, 2013, and scheduling a procedural conference for October 30, 2013.

10 On October 30, 2013, a procedural conference was held as scheduled, with Mr. Smith,
11 Payson, and Staff appearing through counsel. Brooke did not appear. Mr. Smith reported that not
12 much progress had been made toward resolution of the discovery dispute or this matter and requested
13 that the Commission enforce the subpoenas against Mr. Pearson. Payson reported that it had
14 produced all of the responsive documents it could, that Mr. Pearson claimed he had no further
15 documents, and that Mr. Hardcastle claimed that he had produced everything in his possession.²⁴ The
16 process for enforcing subpoenas was discussed, as was Mr. Smith's requested relief in this matter.
17 Mr. Smith requested that Brooke, through Mr. Hardcastle, be required to come before the
18 Commission to explain, under oath, what additional requested documents existed; that the
19 Commission exercise its contempt power against Mr. Pearson; and that a hearing then be scheduled.
20 Staff was directed to provide a witness to speak to Payson's compliance with the WAS mechanism
21 requirements. The remaining issues were taken under advisement.

22 On November 12, 2013, counsel for Mr. Smith filed a Motion to Withdraw as Counsel of
23 Record with Client Approval ("Motion to Withdraw"), stating that Mr. Smith wished to return to self-
24 representation in this matter.

25 On December 16, 2013, a Procedural Order was issued granting the Motion to Withdraw.

26 On January 29, 2014, Mr. Smith filed a Notice of Complainant's Fifth Discovery and
27

28 ²⁴ Payson reported that Mr. Hardcastle had stated that he had produced everything relevant to Payson and this case and everything in his possession responsive to Mr. Smith's data requests. (Tr. of October 30, 2013, at 9.)

1 Disclosure ARCP Rule 26.1 and AAC Rule R14-3-109 et. seq. In the Notice, Mr. Smith made a
2 number of assertions related to what he described as “an extreme case on Obstruction of Justice” and
3 provided 18 pages of documents described as trial exhibits.

4 On February 25, 2014, the Hearing Division issued a Recommended Order finding Mr.
5 Pearson to be in contempt and requiring Mr. Pearson to appear in person on April 21, 2014, and show
6 cause why his conduct did not constitute contempt of the Commission and why the Commission
7 should not impose fines and penalties against him. The Recommended Order provided that Mr.
8 Pearson could avoid the fines, penalties, and appearance requirement if he complied with specific
9 requirements for document production.

10 On March 19, 2014, the Commission issued Decision No. 74401, adopting the Recommended
11 Order.²⁵

12 On April 21, 2014, the Order to Show Cause Hearing was convened as scheduled, with
13 Payson and Staff appearing through counsel and Mr. Smith not appearing. Mr. Pearson did not
14 attend. It was determined that the next step was for the Legal Division to file with the Superior Court
15 for enforcement of Decision No. 74401. Staff’s counsel agreed to file copies of all court-related
16 documents. Payson asserted that this matter should be dismissed because of Mr. Smith’s failure to
17 appear. Payson further asserted that the total WAS amount paid by Mr. Smith in 2011 was
18 approximately \$176.

19 On May 28, 2014, Payson filed a Motion to Compel Response to Data Request by Payson
20 Water Co., Inc., stating that Mr. Smith had refused to respond to a data request sent by Payson on
21 April 29, 2014, and requesting that an order be issued compelling Mr. Smith to respond timely to the
22 data request. Payson further requested that an order dismissing this matter be issued if a timely
23 response was not received. The data request asked Mr. Smith to admit that several attached invoices
24 represented all of the 2011 statements including WAS that Mr. Smith had received from Payson.

25 On September 2, 2014, Staff filed a Request for Procedural Conference, asking that a
26 Procedural Order be issued establishing a date and time for Mr. Pearson to appear and make himself
27

28 ²⁵ The Commission also adopted Hearing Division Amendment No. 1, which corrected typographical errors.

1 available for questioning by Mr. Smith. Staff stated that, in preparation of enforcement proceedings,
2 Staff had contacted and spoken to Mr. Pearson, who indicated that he was willing to cooperate and
3 make himself available. Staff suggested that a telephonic appearance be permitted because Mr.
4 Pearson's employment required him to travel out of state for extended periods.

5 On September 19, 2014, Mr. Smith filed a Response to Staff's Request for Procedural
6 Conference and His Request to Modify, objecting to having Mr. Pearson appear telephonically and
7 asserting that his telephonic appearance would limit Mr. Smith's ability to examine Mr. Pearson;
8 would prevent Mr. Smith from providing Mr. Pearson physical evidence to review, inspect, and be
9 questioned about; and would not comply with the subpoena directing Mr. Pearson to attend and
10 produce documentation. Mr. Smith requested that the Commission make Mr. Pearson comply with
11 the subpoena issued by the Commission by appearing before the Commission and producing the
12 documents requested.

13 On October 8, 2014, Staff filed Staff's Response to Complainant's Response, requesting
14 issuance of a Procedural Order establishing a date and time for Mr. Pearson to appear telephonically.
15 Staff stated that Mr. Pearson had indicated that he had no documents responsive to the subpoena
16 aside from those already provided in a related docket and that Mr. Pearson was willing to appear by
17 telephone because of his work as a truck driver. Staff opined that, in light of Mr. Pearson's
18 willingness to cooperate, an enforcement action in Superior Court should not be pursued.

19 On October 27, 2014, a Procedural Order was issued scheduling a procedural conference to be
20 held on November 17, 2014, for the purpose of taking sworn telephonic testimony from Mr. Pearson
21 regarding water hauling to MDC.

22 On October 27, 2014, Mr. Smith filed an Objection to Staff's Response to Complainant's
23 Response to Staff's Request for Procedural Conference and His Request to Modify, strongly
24 objecting to Mr. Pearson's being permitted to appear telephonically and alleging, *inter alia*, that Staff
25 had made misrepresentations in its Response, that Staff's counsel had behaved unethically and not
26 impartially,²⁶ and that Mr. Pearson had been involved in "an elaborate scheme to defraud the
27

28 ²⁶ Mr. Smith suggested that Staff Attorney Robin Mitchell should recuse herself.

1 Customers of the MDC System.” Mr. Smith requested that Mr. Pearson be required to appear
2 personally and to have with him, or preferably present to Mr. Smith, all of the original documentation
3 requested in the subpoena and that Mr. Pearson be held in contempt of the Commission, fined, and
4 subjected to sanctions if he did not.

5 On November 3, 2014, Jay L. Shapiro and the law firm of Fennemore Craig, P.C., filed a
6 Motion to Withdraw as Counsel for Payson Water Co., Inc. (“Motion”), with Payson’s consent,
7 because Payson was unable to pay Fennemore Craig for legal services and costs advanced in
8 connection with this matter. The Motion included a signed statement from Mr. Williamson,
9 consenting to the withdrawal and stating that Payson had authorized Mr. Williamson to appear on
10 Payson’s behalf.

11 On November 17, 2014, the procedural conference was held as scheduled, with Mr. Smith
12 appearing pro se, Payson appearing through Mr. Williamson, and Staff appearing through counsel.²⁷
13 Mr. Pearson attended telephonically and provided sworn testimony under examination from the
14 Administrative Law Judge and Mr. Smith. After the testimony, the parties were directed to discuss
15 and then submit proposed hearing dates.

16 On December 15, 2014, Mr. Smith filed a Request to Set a Date for Hearing in the Above
17 Cited Matter, requesting that the hearing be scheduled for January 15 and 16 or 22 and 23, 2014.²⁸
18 Mr. Smith asserted that the other parties had no conflicts and would be available.

19 On December 30, 2014, a Procedural Order was issued granting Mr. Shapiro’s Motion and
20 scheduling a hearing to commence on January 15, 2015.

21 On January 9, 2015, Mr. Smith filed a Notice of Complainant’s 6th Discovery and Disclosure
22 ARCP Rule 26.1 and AAC Rule R14-3-109 et. seq., including 86 pages of various documents
23 described as Trial Exhibits.

24 On January 13, 2015, Mr. Smith filed a Notice of Complainant’s 7th Discovery and
25 Disclosure ARCP Rule 26.1 and AAC Rule R14-3-109 et. seq., including 52 pages of various
26 documents described as Trial Exhibits.

27 ²⁷ Staff was represented by Assistant Chief Legal Counsel Janet Wagner and Staff Attorney Brian E. Smith. Staff
Attorney Robin Mitchell did not appear on behalf of Staff. Mr. Williamson appeared telephonically.

28 ²⁸ The use of 2014 rather than 2015 was disregarded as a typographical error.

On January 14, 2015, Mr. Smith filed a Notice of Complainant's 8th Discovery and Disclosure ARCP Rule 26.1 and AAC Rule R14-3-109 et. seq., including 8 pages of documents described as Trial Exhibits.

On January 15 and 30, 2015, the evidentiary hearing for this matter was held before a duly authorized Administrative Law Judge of the Commission, with Mr. Smith appearing pro se, Payson appearing through Mr. Williamson, and Staff appearing through counsel. Commissioner Tom Forese attended the first day of hearing. Mr. Smith presented documentary evidence and called as witnesses LaRon Garrett, Assistant Town Manager and Public Works Director for the Town of Payson; Mr. Williamson; Mr. Gehring; and himself. Staff presented documentary evidence and called as its witness Darron Carlson, Public Utilities Analyst Manager in Staff's Financial and Regulatory Analysis Section. Payson did not present documentary evidence or call any witnesses.

III. THE COMPLAINT

A. Generally

Mr. Smith's Complaint makes the following allegations:²⁹

Count 1: Payson violated the terms and conditions set forth by Decision No. 71902, "through a fraudulent and deceitful method," (a) by applying its Curtailment Tariff to all water usage instead of only outdoor water usage, (b) by disconnecting Mr. Smith's water service without providing valid prior notification, and (c) by overcharging Mr. Smith through Payson error in reading Mr. Smith's meter.

Count 2: Payson's WAS was "excessive and abusive as it charged twice for the same amount of water."

As this matter proceeded, Count 2 broadened and evolved to include the following additional allegations: (a) Payson inappropriately applied the WAS, resulting in overcharges to MDC customers; (b) Payson provided inadequate notice of the WAS to MDC; (c) Payson provided Staff inaccurate consumption numbers to support the WAS; (d) Payson had MDC water hauled from MDC

²⁹ The allegations are described in regard to alleged actions by Payson, although Mr. Smith made the allegations against Payson/Brooke, essentially characterizing the two as a single entity. Mr. Smith did not provide sufficient evidence to justify piercing the corporate veil in this matter. Furthermore, Brooke is no longer involved in Payson's operations. Additionally, for ease of reference, the allegations are organized into counts with subsections.

1 to East Verde Park ("EVP"); (e) Payson charged MDC for water purchased for EVP; and (f) Payson
 2 charged MDC the hauling charges (specifically the travel time) for water hauled to EVP.³⁰

3 Relief Sought:

4 Mr. Smith's Complaint sought the following relief:

- 5 1. The Court should order a full investigation of the Water Company as
 6 to misconduct of reviewing consumer complaint's [sic], relating to all
 Federal and State consumer fraud laws.
- 7 2. The Court order a full investigation into discriminatory acts of the
 8 Company that violate laws and orders of the ACC with impunity,
 9 while customers suffer economic penalties and disruption of water
 service for supposed violation of same decision 71902 and suffer again
 overcharge's [sic] for water hauling, while ACC staff maintain the
 Company did nothing wrong.
- 10 3. The Complainant should be fully refunded all money paid out for the
 11 wrongful termination and reconnection of water service and for water
 12 overcharges on the water augmentation surcharge (for the continual
 13 abuse of billing overcharges to the customer) and pay back in full plus
 a 10% per month compounded monthly 120% APR on any unpaid
 balance for use of Complainant's money for Corporate profits and
 until full payment has been received.
- 14 4. The Court order a full criminal investigation into the customer service
 15 center of Brooke Utilities Inc., Corporate practices, all customer
 16 service calls and complaint's [sic], billing practices and preparation,
 Corporate Records for water augmentation and the hauling records of
 the hauling companies for possible criminal prosecution for consumer
 fraud.³¹

17 Mr. Smith's requested relief also evolved as this matter progressed. Mr. Smith had significant
 18 difficulty defining what he considered to be appropriate relief, as he said that a finding that all of his
 19 suspicions were true would affect not just himself but every individual in MDC, although he also
 20 stated that he was not qualified to speak for the MDC community regarding an adequate remedy and
 21 that the harm caused included home sales and foreclosures.³² Mr. Smith ultimately said that he
 22 thought the MDC customers should be refunded what they were overcharged under the WAS and that
 23 he should receive \$25,000 as compensation for his legal fees (asserted to be \$4,000, of which he had
 24 paid \$2,000) and his time spent on this matter.³³ Mr. Smith also stated that he would like to see a
 25 change that would result in customers' being able to find out what they are paying for, as the costs of

26 ³⁰ See, e.g., Tr. at 93, 96-98, 107-110, 131-33, 150, 170-71, 174-77, 181. Mr. Smith was permitted to broaden the scope
 27 of his allegations related to the WAS although he did not request amendment of his Complaint.

28 ³¹ Ex. C-2 at 6.

³² See, e.g., Tr. at 104-07, 182-184.

³³ Tr. at 183-84.

1 the water hauling were not made clear, and there was “a lot of discovery abuse” in this matter.³⁴

2 **B. Count 1: Curtailment Tariff Implementation Issues**

3 **1. The Allegations**

4 Mr. Smith recounted the following events³⁵ as the basis for Count 1:

5 *Monday, June 6, 2011:* Mr. Smith’s water meter was read when Stage 2 was posted for MDC.

6 *Tuesday, June 7, 2011:* Mr. Smith’s water meter was read again. It is unclear whether this was
7 during Stage 2 or Stage 3 because no meter reading time is noted. The system went to Stage 3 at
8 approximately 3:15 p.m. that day.

9 *Wednesday, June 8, 2011:* Mr. Smith’s water connection was shut off at approximately 9:15 a.m.
10 At approximately 4:00 p.m., Mr. Smith found a Warning Notice of Disconnection sticking out of his
11 meter box and discovered that there was a lock on the valve. Mr. Smith called Payson’s customer
12 service line (“customer service”), but it was closed. According to Mr. Smith, no attempts had been
13 made to notify him before the water was shut off.

14 *Thursday, June 9, 2011:* Mrs. Smith called customer service and spoke to a representative who told
15 her that it would cost \$200 to have the water turned back on. Mrs. Smith told the representative that
16 the Smiths only use water indoors, and the representative said that they had used too much water.
17 Mr. Smith then contacted Staff’s Consumer Services Section (“Consumer Services”) to make an
18 informal complaint against Payson/Brooke. Upon learning that the water account was not in Mr.
19 Smith’s name, Consumer Services informed Mr. Smith that it did not take third-party complaints.
20 Mr. Smith told Consumer Services that the homeowners had been contacted. The homeowners then
21 called Consumer Services to make an informal complaint. The homeowners also called the
22 emergency number for Payson/Brooke and spoke with a water technician who stated that he did not
23 have authority to restart water service and would not be able to speak with a supervisor until the next
24 day.

25 *Friday, June 10, 2011:* Mr. Smith called the homeowners twice, once in the morning and once in the
26 afternoon. The homeowners reported that they had not heard from Payson/Brooke. Mr. Smith

27 ³⁴ See Tr. at 195-96. As demonstrated by the procedural history for this matter, there were significant discovery
28 disputes between the parties.

³⁵ See Ex. C-2 at 2-3; Ex. C-1 at 1-2.

1 decided to pay the \$200 fine and did so at the APS office at approximately 3:00 p.m. Mr. Smith also
2 paid \$25 toward the May 2011 bill that he had not yet received.

3 *Saturday, June 11, 2011:* Mr. Smith's home had no water service.

4 *Sunday, June 12, 2011:* Mr. Smith's home had no water service.

5 *Monday, June 13, 2011:* Mr. Smith's home had no water service. Mr. Smith went to the APS office
6 and asked if Payson/Brooke had been notified of the payment. APS reported that because payments
7 are emailed the morning following the date upon which they are made, Mr. Smith's Friday payment
8 had not been sent until that morning.

9 *Tuesday, June 14, 2011:* Mr. Smith called the homeowners at approximately noon and requested
10 that they contact Payson/Brooke. The homeowners called Mr. Smith back within one hour and stated
11 that they had spoken with a customer service representative who had verified receipt of Mr. Smith's
12 payment. Water service to Mr. Smith's home resumed at approximately 3:00 p.m.

13 *Thursday, June 16, 2011:* Consumer Services called Mr. Smith and told him that it had contacted
14 Payson/Brooke and requested for Mr. Smith's water service to be resumed with no fines imposed, but
15 without success. Consumer Services told Mr. Smith that Payson/Brooke reported Stage 4 status and
16 that Consumer Services would be meeting with the Commission's Legal Division that afternoon. Mr.
17 Smith called the homeowners, who reported that they had received a similar call from Consumer
18 Services and had not received any contact from Payson/Brooke. The same day, Mr. Smith received
19 his May water bill, which showed that Mr. Smith had used 8,060 gallons, approximately twice as
20 much as usual.

21 Mr. Smith then reviewed his water bills and noticed that the meter reading for May was
22 higher than the meter reading for June. Mr. Smith called Payson, reported that the May meter
23 reading had been wrong, and asked for a refund of the \$200 fine. Payson's customer service
24 representative told Mr. Smith that the meter would be checked.

25 According to Mr. Smith, the May 20, 2011, billing statement should not have included a late
26 fee and a previous balance because he had paid the April 2011 billing statement on May 17, 2011.
27 Mr. Smith also asserts that the June 2011 billing statement did not provide adequately refund the
28

overcharge from the May 2011 bill.³⁶

Mr. Smith asserts that Payson violated A.A.C. R14-2-410(A)(1); (B)(1)(d); (C)(1)(a); (D)(1) and (2); (E)(1), (2), and (4); and (F) by shutting off water service without following procedures that required direct contact with him as a renter. Mr. Smith further states that he has suffered damages and injuries as well as financial hardship because he has been forced to pay for billing mistakes, meter read errors, water service termination and reconnection fees, water hauling charges, and a fine, all due to the "negligent acts" of Payson. Mr. Smith also asserts that the "fraudulent billing charges" violated Arizona law because Arizona law requires public service corporations' charges to be just and reasonable. Additionally, Mr. Smith alleges that he "has not been given any credibility of conduct by Company or ACC when initiating complaints to the Company [or] the ACC. Complainant claims actions are discriminatory and allege they are violation/s of Federal & State Consumer laws and Public Policy."³⁷

2. The Evidence

Documentation³⁸ provided by Mr. Smith shows the following billing-related activity:

Billing Statement Date	April 22, 2011	May 20, 2011 ³⁹	June 22, 2011	July 22, 2011
Usage Period	March 16, 2011-April 16, 2011	April 16, 2011-May 16, 2011	May 16, 2011-June 16, 2011 ⁴⁰	June 16, 2011-July 16, 2011
Starting Meter Read	254,740	259,280	267,340	264,090
Ending Meter Read	259,280	267,340	264,090	269,060
Usage (Gallons)	4,540	8,060	-3,250	4,970
Previous Balance	\$48.77	\$27.29	\$66.34	\$24.40
Payments	\$48.77	n/a	\$252.39	n/a
Late Fee	n/a	\$0.41	n/a	\$0.37
Reconnection Fee	n/a	n/a	\$200.00	n/a
WAS	n/a	n/a	n/a	\$67.59
Credits	n/a	n/a	\$6.29	n/a

³⁶ Mr. Smith believes the overcharge was for 4,060 gallons at \$0.00299 per gallon rather than 3,250 gallons at \$0.00193 per gallon, which was the amount credited.

³⁷ Ex. C-2 at 4.

³⁸ See Ex. C-2 at ex. A, ex. F, ex. G, appendix B.

³⁹ Mr. Smith reports that this billing statement was not received until June 16, 2011. See, e.g., Ex. C-2 at 3.

⁴⁰ This period includes the almost seven-day disconnection period.

1 Total Amount Due	\$27.29	\$66.34 ⁴¹	\$24.40	\$126.17
2 Due Date	May 7, 2011	June 4, 2011	July 7, 2011	August 6, 2011
3 Paid Date	May 17, 2011 ⁴²	June 10, 2011	Not provided	July 29, 2011

4 Additionally, Mr. Smith provided the Warning Notice of Disconnection for Stage 3
 5 (“Warning Notice”), dated June 7, 2011, which shows a meter read of 263,690 for that day and a
 6 meter read of 263,560 for the prior day, daily use of 130 gallons, maximum daily use of 97 gallons, a
 7 required usage reduction of 33 gallons, and a disconnection date of June 8, 2011.⁴³

8 Payson did not rebut Mr. Smith’s assertion that advanced notice of the potential disconnection
 9 had been provided only by placing the Warning Notice in the meter box.⁴⁴ Payson did, however, file
 10 documentation showing that the \$200 reconnection fee had been voided and converted to a credit to
 11 the Hutchison account on or before January 20, 2012, just 10 days after the Complaint in this matter
 12 was filed.⁴⁵ Staff reported that Payson decided to credit the Hutchison account on December 13,
 13 2011, and that Mr. Smith had been pleased to hear this when notified by Staff on December 14,
 14 2011.⁴⁶ Mr. Smith did not deny that the charge had been reversed.

15 3. The Curtailment Tariff and Commission Rule

16 The Curtailment Tariff does not address indoor water usage except to require that restaurants
 17 and convenience stores only serve patrons water upon request during Stages 3 through 5. Nor did
 18 Decision No. 71902 require that the Curtailment Tariff address indoor water usage. Rather, Decision
 19 No. 71902 stated the following regarding indoor water usage:

20 27. The amended Curtailment Tariff for the MDC System that
 was filed by the Company incorporates modifications and addresses the

21 ⁴¹ This billing statement broke service into more line items than usual (*i.e.*, two lines for service charge and four lines
 for commodity charge), but the total amounts billed are consistent with the rates and charges effective at the time.

22 ⁴² This payment was past due.

23 ⁴³ Under the Curtailment Tariff, this daily usage level would represent monthly water consumption of 3,900 gallons and
 would be a violation if it did not represent at least a 30-percent reduction in use from the higher of the prior month’s
 24 consumption or the consumption in the same month in either of the prior two years. (*See* Ex. C-2 at ex. C.) There is an
 exemption from the mandatory daily use reductions for customers who use 4,000 gallons or less per month based on a 12-
 25 month rolling average. (Ex. C-2 at ex. B.) Mr. Smith has not asserted that this exemption applies to his household,
 however, and the table showing usage for March 16, 2011, through July 16, 2011, suggests that his household would not
 be eligible.

26 ⁴⁴ In Mr. Hardcastle’s Rejoinder Testimony filed July 30, 2012, of which official notice is taken, he stated that Mr.
 Smith “may be correct” that the disconnection notice was only found in the meter box. Official notice is taken of Mr.
 Hardcastle’s Rejoinder Testimony.

27 ⁴⁵ *See* Payson’s Answer to Formal Complaint from Smith; Motion to Dismiss, filed on February 2, 2012, of which
 official notice is taken.

28 ⁴⁶ Ex. S-1.

parties' concerns as follows:

....

- Specific prohibitions against indoor water use have been eliminated. This addresses Staff's concerns about mandatory reductions in basic water use needs for the continued health and safety of customers.

....

42. The primary reason Staff opposed the "daily use" calculation in the proposed Curtailment Tariff for the MDC System was because it could involve an implementation of a curtailment both outside the house, which is usually the case, and in this instance inside the house where curtailment is not usually applied.⁴⁷

The Curtailment Tariff states the following regarding the notice that must be provided before a customer's service is disconnected:

Notice: Under Stage 3 conditions the Company is required to notify customers by (a) door-to-door delivery of written notices at each service address; or, (b) by changing local water conservation staging signs; or, (c) by means of electronic mail; or, (d) by means of any other reasonable means of notification of customers of the Water System; of the imposition of the Curtailment Tariff, the applicable Curtailment Stage, a general description of conditions leading to Stage 3 conditions, and a need to conserve water.

Enforcement: Once the Company has properly provided notice of Stage 3 conditions, the failure of a customer to comply with this Curtailment Plan within twenty-four (24) hours of receiving notice of its violation of this Curtailment Plan may result in the immediate disconnection of service, without further notice, in accordance with Arizona Administrative Code R14-2-410(B)(1)(d). The reconnection fee for a violation of a Stage 3 curtailment notice shall be:

First offense: \$200⁴⁸

A.A.C. R14-2-410(B)(1)(d) provides that "[u]tility service may be disconnected without advance written notice [upon the f]ailure of a customer to comply with the curtailment procedures imposed by a utility during supply shortages."

A.A.C. R14-2-410(F) states the following:

F. Landlord/tenant rule. In situations where service is rendered at an address different from the mailing address of the bill or where the utility knows that a landlord/tenant relationship exists and that the landlord is the customer of the utility, and where the landlord as a customer would otherwise be subject to disconnection of service, the utility may not disconnect service until the following actions have been taken:

1. Where it is feasible to so provide service, the utility, after

⁴⁷ Decision No. 71902 at 7-9.

⁴⁸ Decision No. 71902 at Ex. A at 3-4.

1 providing notice as required in these rules, shall offer the occupant
 2 the opportunity to subscribe for service in his or her own name. If
 the occupant then declines to so subscribe, the utility may
 disconnect service pursuant to the rules.

- 3 2. A utility shall not attempt to recover from a tenant or condition
 4 service to a tenant with the payment of any outstanding bills or
 other charges due upon the outstanding account of the landlord.

5 A.A.C. R14-2-401(9) defines "customer" as follows:

6 "Customer." The person or entity in whose name service is rendered, as
 7 evidenced by the signature on the application or contract for that service,
 or by the receipt and/or payment of bills regularly issued in his name
 regardless of the identity of the actual user of the service.

8 **4. Resolution**

9 a. Indoor Water Usage

10 Mr. Smith appears to have interpreted the language from Decision No. 71902 related to
 11 indoor water usage to mean that indoor water usage would not count toward total water usage for
 12 purposes of the Curtailment Tariff. This interpretation is incorrect, as it must be for the purposes of
 13 the Curtailment Tariff to be achieved. As the property associated with each MDC customer account
 14 generally has only a single water meter, a specific exclusion for indoor water usage would be
 15 impossible to implement without installation and implementation of additional water meters to
 16 distinguish indoor from outdoor use. This action, which would cause significant expense, was not
 17 required or intended by Decision No. 71902. From the language of Decision No. 71902 quoted
 18 above, it is clear that the amended Curtailment Tariff approved therein responded to Staff's concerns
 19 by removing specific prohibitions on indoor water uses akin to the numerous restrictions and
 20 prohibitions on specific outdoor water uses included therein (*e.g.*, outdoor irrigation, vehicle washing,
 21 construction water, etc.). As a result, we conclude that Payson did not violate any term or condition
 22 of Decision No. 71902 by applying the Curtailment Tariff to all of the water usage at Mr. Smith's
 23 home rather than only to the outdoor water usage at Mr. Smith's home. Count 1(a) is not
 24 substantiated.

25 b. Disconnection Notice

26 Under the Curtailment Tariff, Payson is required to provide all of its customers notice when
 27 Stage 3 conditions are imposed. Payson is also required to provide a customer notice of the
 28 customer's violation of the Curtailment Plan, at least 24 hours before disconnecting the customer's

1 service, so that the customer has an opportunity to comply. The Curtailment Tariff allows for notice
2 to be made through delivery of a written notice to a customer's door, electronic mail to a customer, or
3 any other reasonable means of notification.⁴⁹ The purpose of the violation notice under the
4 Curtailment Tariff is to allow the customer to come into compliance within 24 hours. Thus, any
5 means of notification of a Curtailment Plan violation will only be reasonable if it is designed and
6 reasonably can be expected to provide timely and actual notice to the customer.

7 The evidence indicates that Payson provided notice to Mr. Smith's home only by leaving a
8 written notice in the home's water meter box. This action could not reasonably have been expected
9 to result in timely and actual notice, as there is no reasonable expectation that a customer will open
10 and look inside a water meter box on a daily or other regular basis. Thus, Payson failed to provide
11 the 24-hour advance notice to Mr. Smith required by the Curtailment Tariff and was not authorized to
12 disconnect service to Mr. Smith's home on June 8, 2011. Payson violated the terms of its
13 Curtailment Tariff and Decision No. 71902 when it disconnected the Smiths' service and when it
14 charged the Hutchison account a reconnection fee of \$200.

15 Additionally, we note that A.A.C. R14-2-410(F) does not provide any exemption for
16 disconnections without notice under A.A.C. R14-2-410(B)(1)(d). If Payson actually considered Mr.
17 Smith, as a renter, not to be the customer, then Payson was also obligated by A.A.C. R14-2-410(F)
18 not to disconnect service to Mr. Smith's home until it has provided notice, offered Mr. Smith an
19 opportunity to subscribe for service in his own name, and had him decline such offer. Payson also
20 failed to comply with A.A.C. R14-2-410(F) before disconnecting service and thus was not authorized
21 to disconnect service to Mr. Smith's home on that basis.

22 Count 1(b) is substantiated. We note, however, that the Hutchison account was credited \$200
23 as a refund of the reconnection fee as of January 20, 2012.

24 c. Overcharge Due to Meter Read Error

25 The billing information provided by Mr. Smith shows that Payson misread or misstated the
26 reading from the meter at Mr. Smith's home on May 16, 2011, causing an overbilling on the billing

27 _____
28 ⁴⁹ Changing local water conservation staging signs would not be a reasonable means of providing notice specific to an individual customer.

statement dated May 20, 2011. Although the Hutchison account was subsequently credited \$6.29 for this meter reading error, that amount did not fully reimburse the account for the error. While the actual usage rate as of May 16, 2011, is not known due to the error, the average daily rate for the previous month (146.45 gallons per day) would have resulted in monthly usage of 4,394 gallons. Assuming this monthly usage, the account was billed for 3,666 gallons that were not used, all at the second-tier commodity rate of \$0.00299, for a total of \$10.96 plus tax and a grand total of \$11.80.⁵⁰ Count 1(c) is substantiated.

5. Remedy

Under A.R.S. § 40-248(A), when the Commission investigation of a complaint finds that a public service corporation has made an excessive or discriminatory charge, the Commission may order the public service corporation to make reparation to the complainant, with interest at the legal rate from the date of collection, provided no discrimination will result. A.R.S. § 40-248(C) provides that this remedy is cumulative and in addition to any other remedy provided for a public service corporation's failure to obey a Commission order or decision. The Commission also has authority to impose penalties upon a public service corporation for failure to comply with any provision of the Arizona Constitution; A.R.S. Title 40, Chapter 2; or any Commission decision, order, or rule. (See A.R.S. §§ 40-424 and 40-425; Ariz. Const. Art. 15, § 19.) Such penalties are payable to the State, however, as the Commission lacks authority to require a public service corporation to pay damages to a person aggrieved by the public service corporation's failure to comply. (See A.R.S. § 40-423(B).) Any recovery of damages by such a person must be sought in a court of law. (See A.R.S. § 40-423(A).)

We conclude that Payson should be required to credit the Hutchison account for interest on the \$200 charge between the date it was paid (June 10, 2011) and the date by which it was credited to the Hutchison account (January 20, 2012), which amounts to \$5.22.⁵¹ Additionally, we conclude that

⁵⁰ The tax calculation is based on a tax rate of 7.6 percent, rounded up to recognize the additional very small commodity tax/usage tax.

⁵¹ The legal interest rate, pursuant to A.R.S. § 44-1201(B), is 4.25 percent, as the prime rate in Federal Reserve H.15 has been 3.25 percent since December 16, 2008. Official notice is taken of this legal interest rate. The Arizona Supreme Court has determined that A.R.S. § 44-1201 provides for only simple interest. (See, e.g., *Metzler v. BCS Coca-Cola Bottling Company of Los Angeles, Inc.*, 329 P.3d 1043, 148, 235 Ariz. 141, 146 (Ariz. 2014).)

1 Payson should be required to credit the Hutchison account for the uncredited overcharge amount of
2 \$5.51, with interest from the date of payment (June 10, 2011) to December 1, 2015, which amounts
3 to \$6.56. Additionally, we find that Payson should be required to amend its Curtailment Tariff to
4 clarify that a notice of violation of the Curtailment Plan must be provided to a customer's service
5 location by personally delivering the notice to an apparently responsible adult living or working at the
6 service location, depositing the notice into the mailbox for the service location (on any day except
7 Sunday or a federal holiday), or posting the notice on the main doorway or garage door of the service
8 location and to clarify that service may not be disconnected for a violation of the Curtailment Plan
9 until at least 24 hours have passed since the notice of violation was provided at the customer's service
10 location in accordance with these requirements. Further, we find that Payson's Curtailment Tariff
11 should be amended to require compliance with A.A.C. R14-2-410(F) when an account involves a
12 landlord-tenant arrangement.

13 We are concerned about the significant delay between Mr. Smith's payment of the \$200
14 reconnection fee and the crediting of that payment on the Hutchison account. Thus, we conclude that
15 Payson should be required to provide the Commission a report describing the payment methods
16 currently available to its customers; stating how quickly payments are credited to customer accounts
17 with each method; analyzing the feasibility and costs and benefits of establishing additional payment
18 methods or altering current payment methods to ensure that each payment made in cash to an
19 authorized agency (such as APS) or made electronically or by telephone using a credit card is
20 credited to a customer's account within 24 hours after the payment is made; and describing Payson's
21 plan to improve the speed with which customer payments are credited to customer accounts.

22 The Commission's rules for water utility service do not include a requirement for how quickly
23 customer payments must be credited to customer accounts and do not require that a water utility
24 provide for payment options aside from payment in person or by mail, either to the utility directly or
25 to the utility's duly authorized representative ("agent"). (*See* A.A.C. R14-2-409(C)(4).) The water
26 utility billing and collection rule has not been amended since 1982. In light of currently available
27 payment methodologies, it may be appropriate to pursue amendment of the rule to require water
28 utilities to make modern payment methodologies available to customers.

Staff should be required to review and analyze Payson's report and to provide any recommendations that Staff has concerning Payson's current payment methods and its plan to improve the speed with which customer payments are credited to customer accounts and, further, providing any Staff recommendations regarding whether rulemaking should be pursued to amend the Commission's rules related to payment methodologies for water utility service.

The evidence provided has not established that Payson violated the Curtailment Tariff and Decision No. 71902 "through a fraudulent and deceitful method" or with any other form of malice. We conclude that Payson should not be assessed penalties for the Count 1 violations. In reaching this conclusion, we are cognizant that Payson is under completely different ownership and management than it was at the time of the events recounted in the Complaint.

C. Count 2: WAS Tariff Implementation Issues

1. The Allegations

Mr. Smith's initial allegation was that the WAS tariff was implemented improperly, resulting in customers' being charged twice rather than proportionally for hauled water, because Payson applied the WAS to the total amount of water used, not just to the water actually hauled. This is considered to be Count 2(a). Mr. Smith's additional allegations related to implementation of the WAS tariff are: (b) Payson provided inadequate notice of the WAS to MDC, (c) Payson provided Staff inaccurate consumption numbers to support the WAS, (d) Payson had MDC water hauled from MDC to EVP, (e) Payson charged MDC for water purchased for EVP, and (f) Payson charged MDC the hauling charges (specifically the travel time) for water hauled to EVP.

2. The Evidence

The relevant documentation provided related to Count 2 includes, *inter alia*, a printout from the Town showing the activity on Brooke/Payson's account from May 18, 2010, through June 11, 2013, and on Payson's account from June 12, 2013, through December 29, 2014;⁵² Pearson invoices and hauling logs for water purchased from the Town and hauled to MDC from June 7, 2011, through September 28, 2011;⁵³ Pearson invoices and one hauling log for water purchased from the Town and

⁵² See Ex. C-11; Tr. at 33-34, 178. Payson established its own account after the change in ownership. (See Ex. C-11.)

⁵³ See Ex. C-8 at 5-7, 10-11, 13-14, 16-17, 19-20, 22-23, 25-26, 28, 30-31, 33, 35, 36-37, 39-40.

1 hauled to EVP from approximately July 7, 2011, through September 28, 2011;⁵⁴ a Payson 2011 MDC
 2 Water Augmentation Worksheet dated June 7, 2012, showing the amounts charged to MDC for Town
 3 water and hauling and to EVP for Town water during the summer of 2011;⁵⁵ an excerpt from a
 4 February 10, 2014, Proposal for Professional Engineering Services created by Tres Rios Consulting
 5 Engineers, stating that 58,873 gallons of water were hauled to EVP in 2011;⁵⁶ a Town Administrative
 6 Policy dated February 2010 regarding provision of a supplemental water supply to MDC;⁵⁷ Brooke's
 7 MDC Water Augmentation Charges Calculation for expenses billed in July 2011;⁵⁸ MDC customer
 8 consumption printouts from May 20, 2011, through October 16, 2011;⁵⁹ copies of all of the
 9 Hutchison account bills with WAS during 2011;⁶⁰ Staff's calculation of the WAS rate for June-July
 10 2011, with supporting documents;⁶¹ and a copy of the WAS Tariff, in its original and revised
 11 versions.⁶² The table attached hereto and incorporated herein as Exhibit 1 compiles the information
 12 provided in the Town's billing information, the Pearson invoices, and the hauling logs to show the
 13 Town water purchase activity and the hauling related thereto for both MDC and EVP. The
 14 information demonstrates that water purchased from the Town was hauled to EVP on four separate
 15 occasions when water was also being hauled to MDC. While some of the hauling logs for EVP are
 16 not available, the invoice information and the gaps in the hauling logs for MDC, coupled with the
 17 quantities of water purchased from the Town in the pertinent periods, establish approximately how
 18 much water EVP received. The Pearson invoices also establish that EVP was not charged for travel
 19 time on any of these four occasions, while MDC was charged \$600 in travel time for each.

20 The testimony herein establishes that Pearson hauled Town water from the bulk hydrant meter
 21 to both MDC and EVP; billed Brooke-MDC and Brooke-EVP on an hourly basis for water hauling
 22 services, not by load or by gallons hauled, and also billed Brooke-MDC for the travel time from
 23

24 ⁵⁴ See Ex. C-4 at 31-34; Ex. C-8 at 28.

25 ⁵⁵ See Gehring Docket Ex. R-6.

26 ⁵⁶ See Ex. C-4 at 81; Tr. at 177-78.

27 ⁵⁷ See Ex. C-4 at 23-24.

28 ⁵⁸ See Ex. C-10.

⁵⁹ See Ex. C-3 at 1-48.

⁶⁰ See Payson's Motion to Compel Response to Data Request by Payson Water Co., Inc., filed on May 28, 2014 ("Payson MTC"). Official notice is taken of this filing.

⁶¹ See Gehring Docket Ex. S-3.

⁶² *Id.*

1 Williams to the Town and back again.⁶³ (See Transcript of Mr. Pearson's testimony at November 17,
2 2014, Procedural Conference ("11/17/14 Tr.") at 15, 19-20, 22, 24, 26-27, 38.) Pearson's drivers
3 wrote meter readings down for each load on the hauling logs, which were provided to Brooke when
4 the hauling was over. (11/17/14 Tr. at 15-16, 35-36.) Mr. Pearson testified that while Pearson's
5 drivers may have made mistakes in the load meter read entries, the total read at the beginning and the
6 end would have been correct. (11/17/14 Tr. at 15-16.) Pearson's hauling log meter information and
7 load counts were provided for Payson's informational purposes, not for any billing purposes, and
8 Pearson always provided the hauling logs to Payson. (11/17/14 Tr. at 24, 35.) Mr. Pearson stated
9 that each truck held approximately 6,000 or 6,500 gallons and that it took approximately two hours
10 round trip for each load, including the loading and unloading process. (11/17/14 Tr. at 23.) The
11 drivers sometimes hauled for periods as long as 24 hours straight, without taking lunch or other
12 breaks. (11/17/14 Tr. at 16, 27.) As Mr. Pearson recalls, a Payson representative was there at the
13 beginning to install the meter on the hydrant and take a meter reading and was there at the end to take
14 a meter reading and remove the meter. (11/17/14 Tr. at 30-31, 33.)

15 According to Mr. Garrett, the Town would install the water meter upon Payson's request and
16 would provide the meter readings as well. (Tr. at 47.) Payson was a water customer of the Town just
17 like any other customer and purchased water from the Town on a monthly basis, paying the same
18 rates as any other customer, but taking its water from a bulk fire hydrant meter set up behind a Home
19 Depot within Town limits. (Tr. at 23-25, 45-47.) The Town created an Administrative Policy for the
20 provision of supplemental water to MDC in February 2010, allowing Brooke to purchase up to
21 86,400 gallons of water daily for use by MDC customers and making Brooke responsible for
22 transporting the water to MDC. (See Ex. C-4 at 23-24; Tr. at 27-30.) The Administrative Policy did
23 not mention EVP. (*Id.*) No evidence was produced indicating that the Town was aware water was
24 being hauled to EVP in 2011. (See Tr. at 48-49.)

25 Mr. Smith has alleged that water was hauled from MDC to EVP. To support this allegation,
26 Mr. Smith produced an affidavit completed by Mr. Tresca, stating that he had seen a tanker pumping

27 ⁶³ Mr. Smith repeatedly used the Pearson invoices and hauling logs as evidence of the actual amounts of water hauled,
28 rather than as evidence of the cost charged by Pearson for the hauling services. (See, e.g., Tr. at 98-100, 103-04; Ex. C-2
at app. A, app. B.)

1 water from an MDC tank into the tanker in approximately late June to early July 2011.⁶⁴ (Ex. C-6 at
2 16.) In the Gehring Docket, there was also testimony from Evelyn Plante, who stated that in the
3 summer of 2011, she observed from her home, down the street from the MDC tanks, that a tanker
4 truck entering the MDC tanks property appeared to be empty and that the same truck leaving the
5 MDC tanks property appeared not to be empty. (Gehring Docket Tr. at 176-78.) Ms. Plante, who
6 holds a commercial driver license ("CDL") and used to drive trucks cross-country, opined that the
7 truck went into the MDC tanks property empty and took water out of the tank instead of putting water
8 into the tank. (*Id.* at 177-78, 179-80.) Ms. Plante acknowledged that she did not have proof that
9 water was being hauled out of MDC as a source for another location, although that was her opinion.
10 (*Id.* at 180-81.) Mr. Gehring also produced the affidavit of Larry Olson, signed June 25, 2012,⁶⁵ in
11 which Mr. Olson stated that in summer 2010, he observed a water truck driver with his tanker hooked
12 up to a pump that appeared to be pumping water from an MDC storage tank to the tanker, asked the
13 driver whether he was pumping water out of the tank, and left after the driver did not reply. (Gehring
14 Docket Ex. C-6 at 12.) Mr. Olson stated that he saw the same truck on a second occasion leaving the
15 storage facility with a load of water that sloshed off the top and sides of the tanker when it went over
16 a cattle guard and that Mr. Olson followed the tanker briefly and again saw water slosh off the top
17 and sides when it went over a second cattle guard. (*Id.*) Mr. Smith himself also testified in the
18 Gehring Docket that he held a CDL with a tanker endorsement and that he took a photo of a tanker
19 near the MDC tanks leaving MDC with water trailing behind it. (Gehring Docket Tr. at 185-90.) Mr.
20 Smith testified that the back of the tanker could have been trailing water either because its valve was
21 not capped and the tank held residual water or because it was full of water, but that he could not tell
22 which was the case. (*Id.* at 190-91.)

23 Mr. Pearson testified that the tanker trucks are never completely emptied by pumping and that
24 approximately 100 gallons of water generally remain after they are unloaded. (11/17/14 Tr. at 37.)

25 The WAS rate for the June 2011 hauling period was calculated by taking the total amount
26 invoiced by Pearson for hauling from May 23, 2011, through July 3, 2011 (\$15,900); adding it to the

27 ⁶⁴ Mr. Tresca was not called as a witness.

28 ⁶⁵ Mr. Olson did not appear as a witness. Mr. Gehring stated that Mr. Olson was quite ill and could not be at the hearing. (Gehring Docket Tr. at 183.)

1 Town water bill from May 23, 2011, through June 23, 2011 (\$863.77); and dividing that by the total
 2 consumption for MDC from June 17, 2011, through July 16, 2011 (1,234,320). (Ex. C-10; Gehring
 3 Docket Ex. S-3.) The result was a WAS rate of \$0.0136 per gallon. (Ex. C-10; Gehring Docket Ex.
 4 S-3.) This rate was then applied to the total gallons consumed on each individual customer's bill.
 5 (See Gehring Docket Ex. S-3; Payson MTC.) Staff determined that this was the correct manner of
 6 calculating the WAS rate and of applying the WAS rate to each customer's bill. (Tr. at 224-25.)
 7 Further, Mr. Carlson stated that because Staff was very concerned about having ratepayers reimburse
 8 the company each month for the prior month, Staff scrutinized the Payson WAS calculation filings
 9 more than usual. (Tr. at 225.) Every month, Payson sent Staff the calculations and invoices, Staff
 10 checked the calculations and invoices, and Payson waited for Staff approval to assess the WAS on
 11 ratepayer bills. (Tr. at 220-25.) Staff allowed the travel time for the hauler because of a shortage of
 12 haulers in northern Arizona and the absence of a hauler in Payson. (Tr. at 228.)

13 The bills from the Hutchison account show that the account was charged a total of \$163.43 in
 14 WAS for the period from June 16, 2011, through October 16, 2011, with the following monthly
 15 breakdown:⁶⁶

16 Service Dates:	6/16/11 - 7/16/11	7/16/11 - 8/17/11	8/17/11 - 9/16/11	9/16/11 - 10/16/11
17 End Read:	269060	273900	280280	288590
18 Beginning Read:	264090	269060	273900	280280
19 Gallons Used:	4970	4,840	6380	8310
20 WAS Rate per	\$0.01360	\$0.00590	\$0.00820	\$0.00180
21 Gallon:				
22 WAS Charged:	\$67.59	\$28.56	\$52.32	\$14.96

23 Payson and Staff both provided a summary chart showing the Town costs and Pearson costs
 24 figured into the WAS for June-July, July-August, August-September, and September-October 2011,
 25 also showing the deduction of EVP water charges. (See Gehring Docket Ex. R-6; Gehring Docket
 26 Ex. S-1.) The chart is attached hereto and incorporated herein as Exhibit 4.⁶⁷

27 Mr. Smith produced copies of printouts from Payson, provided to Staff in 2012 in response to
 28 a data request made in the Gehring Docket, showing customer consumption, by meter number, for the
 periods of April-May 2011 through September-October 2011. (See Ex. C-3 at 1-48; Tr. at 129-30.)

⁶⁶ See Payson MTC.

⁶⁷ See Ex. S-1.

1 Mr. Smith calculated, for each period, the total amount of consumption shown.⁶⁸ (See Tr. at 130-34.)
 2 For the June-July 2011 consumption, Mr. Smith calculated a total of 1,197,400 gallons. (See Ex. C-3
 3 at 17; Tr. at 134.) Because the consumption worksheets Payson provided to Staff in 2011 to support
 4 the WAS show total consumption of 1,234,320 gallons for June-July 2011, Mr. Smith concluded that
 5 the two sets of consumption figures were “totally different” and that Payson had given Staff
 6 inaccurate consumption information to use in calculating the WAS. (See Tr. at 132-33; Ex. C-10 at 1,
 7 8.)

8 A recalculation of the numbers for June-July 2011 reveals Mr. Smith’s total for the first page
 9 (113,620) as incorrect; the correct total for the first page is 150,540. (See Ex. C-3 at 17.) Correction
 10 of this error results in a total calculation for the month of 1,234,320. (See Ex. C-3 at 17-24.) The two
 11 sets of readings for June-July 2011 result in the same total amount of consumption, although the
 12 consumption figures are presented in a different order, with the figures organized by document
 13 number in the sheets provided in the Gehring Docket and organized by location ID in the sheets
 14 provided to Staff in 2011. (See Ex. C-3 at 17; Ex. C-10 at 1.)

15 3. The WAS Tariff

16 As stated previously, the language to be used for the WAS tariff was not included in Decision
 17 No. 71902. After the issuance of Decision No. 71902, Payson first filed a WAS tariff on October 28,
 18 2010.⁶⁹ The 1st WAS tariff stated that the WAS would be effective between May 1 and September
 19 30 of each year, beginning in 2011 and until the conclusion of Payson’s next rate case, and that it
 20 applied only to MDC system customers. (See 1st WAS tariff.) The 1st WAS tariff stated the
 21 following regarding calculation of the WAS:

22 *Calculation* – Each customer’s monthly surcharge shall be calculated
 23 based on the company’s prior month’s water hauling costs, and compared
 24 to the customer’s water usage during that particular month. The only costs
 recovered by the company through this interim surcharge will be the cost
 of water supply and transportation costs; there will be no administrative

25 ⁶⁸ To determine the total consumption for the June-July 2011 period, as shown in the documents provided in the
 26 Gehring Docket, Mr. Smith reproduced the numbers on each page in a spreadsheet and provided them, with a total for the
 27 page, as a new column on the right hand side of the page. (See Ex. C-3 at 17-24.) Mr. Smith added all of the page totals
 on the last page for the month, reaching a total of 1,197,400, which he also noted on the first page for the month. (See Ex.
 C-3 at 17, 24.)

28 ⁶⁹ See Payson’s Notice of Compliance filed in the WAS Docket on October 28, 2010 (“1st WAS tariff”), of which
 official notice is taken.

costs or profit component of this surcharge.⁷⁰

On November 22, 2010, Payson filed a revised WAS tariff to replace the 1st WAS tariff.⁷¹ The 2nd WAS tariff did not substantively change the calculation language quoted above or the applicability and term of the WAS. (*See* 2nd WAS tariff.) Rather, it added an exemption for customers who use 4,000 gallons or less per month based on a 12-month rolling average. (*Id.*)

On June 17, 2011, Staff filed stamped copies of the 2nd WAS tariff (along with the Curtailment Tariff as filed with the 2nd WAS tariff).⁷² The stamped copies showed an effective date of September 28, 2010. The stamped WAS tariff included the exemption language. (*See* approved tariffs filing.)

On August 17, 2011, Payson filed another revised WAS tariff to replace the 2nd WAS tariff.⁷³ Payson stated that the 2nd WAS tariff had erroneously exempted certain customers from the WAS, although these customers were not exempted by Decision No. 71902. (3rd WAS tariff.). The 3rd WAS tariff did not substantively change the applicability or calculation language, but removed the exemption inserted in the 2nd WAS tariff. (*See* 3rd WAS tariff.)

On August 30, 2011, Staff filed a Notice of Compliance showing that a revised WAS tariff was approved with an effective date of September 28, 2010, but without including the referenced stamped copy of the revised WAS tariff approved.⁷⁴ Based on the timing of this filing, we conclude that the approved tariff language was that of the 3rd WAS tariff.

On its face, the calculation language quoted above lacks clarity. Mr. Smith's allegations regarding its meaning lend credence to that conclusion. Because Decision No. 71902 did not provide the specific language for the WAS tariff, to understand what the Commission was approving in the Decision, it is helpful to review the proposed WAS tariff language that preceded the issuance of Decision No. 71902. The application for the WAS tariff included as a proposed WAS tariff the

⁷⁰ 1st WAS tariff.

⁷¹ *See* Payson's Notice of Compliance (Errata) filed in the WAS Docket on November 22, 2010 ("2nd WAS tariff"), of which official notice is taken.

⁷² *See* Staff's Notice of Compliance letter filed in the WAS Docket on June 17, 2011 ("approved tariffs filing"), of which official notice is taken.

⁷³ *See* Payson's Notice of Correction filed in the WAS Docket on August 17, 2011 ("3rd WAS tariff"), of which official notice is taken.

⁷⁴ *See* Staff's Notice of Compliance letter filed in the WAS Docket on August 30, 2011 ("2nd approved tariff filing"), of which official notice is taken.

1 document attached hereto and incorporated herein as Exhibit 2.⁷⁵ The App. WAS tariff provided the
 2 following regarding calculation of the WAS for each customer:

3 The Water Augmentation Surcharge shall be calculated by dividing the
 4 total Water Augmentation Costs incurred in a calendar month by the total
 5 amount of water sold to its customers for the same period. The resulting
 6 rate per 1,000 gallons of water will then be multiplied by the gallons used
 in the same period for each customer to determine the surcharge amount
 per 1,000 gallons. The resulting Water Augmentation Surcharge will be
 charged to Water System customers in the immediately following period
 as a separate line item on the customer's water bill.⁷⁶

7 While the quoted App. WAS tariff language is imprecise in its use of gallons versus 1,000 gallons, it
 8 is clear as to the customer usage to which the WAS rate is to be applied—all of the gallons used in
 9 the period by the customer, not just those gallons corresponding to the percentage of water hauled for
 10 the system. (See Exhibit 2.)

11 4. Notice

12 A review of Payson's notice-related filings in the WAS Docket reveals that notice regarding
 13 the WAS Docket proceedings was mailed to customers on March 31, 2010; published in the *Payson*
 14 *Roundup* on April 30, 2010; mailed to MDC customers on May 3, 2010; mailed to MDC customers
 15 on June 10, 2010; and published in the *Payson Roundup* on June 15, 2010.⁷⁷ Additionally, Decision
 16 No. 71902 found that Payson had held four separate meetings to inform MDC customers of the
 17 proposed WAS and the proposed changes to the Curtailment Tariff, on April 8 and 10, 2010, and that
 18 the costs of hauling water were discussed at those meetings. (Decision No. 71902 at 5.) The
 19 Decision also required Payson to notify its MDC customers of the WAS authorized therein and its
 20 prospective effective date, by mail, in a form approved by Staff, at least 15 days before the expected
 21 date of imposition, although Payson was not required to and did not file proof of that notice as a
 22 compliance item. (See Decision No. 71902 at 14.)

23 The Public Notice mailed to customers on June 10, 2010, and published in the *Payson*
 24

25
 26 ⁷⁵ See Application for Approval of Water Augmentation Surcharge Tariff, filed in Docket No. W-03514A-10-0116 on
 March 31, 2010, at ex. 4 ("App. WAS tariff"), of which official notice is taken.

27 ⁷⁶ App. WAS tariff.

28 ⁷⁷ See Payson's Notice of Filing filed in the WAS Docket on May 4, 2010; Payson's Notice of Filing Certification of
 Publication and Proof of Mailing filed in the WAS Docket on May 12, 2010; and Payson's Notice of Filing Certification
 of Publication and Proof of Mailing filed in the WAS Docket on June 18, 2010. Official notice is taken of these filings.

1 *Roundup* on June 15, 2010, is attached hereto and incorporated herein as Exhibit 3.⁷⁸ The Public
 2 Notice explained that the WAS was to be determined by prorating the monthly costs to each specific
 3 customer based on the customer's total consumption for the month, so that customers who used more
 4 water would pay a larger proportionate share. (*See* Exhibit 3.) The Public Notice also provided
 5 surcharge cost estimates based on customer water usage and the percentage of water hauled for the
 6 month. (*Id.*) The Public Notice's WAS estimates, with 25 percent of water hauled, ranged from
 7 \$35.72 to \$118.36 per customer, based on usage.⁷⁹ (*Id.*) The Public Notice's WAS estimates with 50
 8 percent of water hauled and with 100 percent of water hauled were significantly higher. (*See Id.*)

9 Decision No. 71902 approved the WAS as an emergency interim rate increase, concluding
 10 that Payson was facing an "emergency" as defined by Attorney General Opinion No. 71-17 ("AG Op.
 11 71-17"⁸⁰). (*See* Decision No. 71902 at 12, 13.) Specifically, the Commission found that an
 12 emergency WAS tariff and revised Curtailment Tariff should be approved to ensure that Payson's
 13 customers could be provided with an adequate water supply if shortages occurred before a long-term
 14 solution to Payson's water shortage problem was developed. (*Id.* at 12.)

15 AG Op. 71-17 stated the following regarding notice in the context of an emergency interim
 16 ratemaking proceeding:

17 In answer to Question Two, it is our opinion that under court
 18 opinions to date no notice of proceedings held on the application of a
 19 public service corporation for interim rate relief need be given to any
 20 person. The corporation and the Commission are the only necessary
 parties to such proceedings.

In Department of Law Opinion No. 71-15, we recently observed

21 ⁷⁸ Exhibit 3 is the Public Notice included as ex. 1 to Payson's Notice of Filing Certification of Publication and Proof of
 22 Mailing filed in the WAS Docket on June 18, 2010, of which official notice has been taken herein.

23 ⁷⁹ We note that the Public Notice erroneously used "gpd" rather than "gallons" or "gallons per month," but find that this
 24 error did not render the notice ineffective. The text describing the estimates spoke to monthly usage and surcharge
 25 estimates for an individual customer, and an individual customer should recognize usage of 2,000 gpd or more per
 26 customer to be blatantly erroneous. Additionally, we note that the estimates provided for one hundred percent hauled
 27 water (with the exception of \$521.24, which appears to be a typo) were taken from the Staff Report bill impact
 28 calculations in the WAS Docket. (*See* Ex. C-6 at 28.) The bill impact analysis included both present rates and the WAS
 increase, and the totals shown in the Public Notice reflect the total bill, with the result that they are higher than if the
 estimated WAS had been shown alone. (*See* Ex. C-6 at 28.)

⁸⁰ Official notice is taken of AG Op. 71-17, issued on May 25, 1971. The emergency interim ratemaking standard
 created by AG Op. 71-17 has been recognized by Arizona appellate courts. (*See Scates v. Arizona Corp. Comm'n*, 578
 P.2d 612, 616 (Ariz. App. 1978); *RUCO v. Arizona Corp. Comm'n*, 20 P.3d 1169, 1173 (Ariz. App. 2001).) Arizona
 courts recognize that interim emergency ratemaking is an exception to the constitutional requirement for the Commission
 to determine the fair value of a utility's property when setting rates. (*See, e.g., RUCO v. Arizona Corp. Comm'n*, 355
 P.3d 610, 614 (Ariz. 2015).)

1 that, although at present there are no constitutional or statutory
2 requirements that notice of, and opportunity to be heard at, general rate-
3 making proceedings be given to consumers,

4 . . . because of many recent judicial decisions recognizing
5 increased individual rights vis-a-vis corporations and
6 governmental entities, we have previously advised the
7 Commission that in the future courts may reverse their
8 stand and hold that utility consumers do have a
9 constitutional right to notice and opportunity to be heard in
10 general rate-fixing proceedings.

11 Assuming, arguendo, that consumers have the right to notice and
12 opportunity to be heard in general rate-making proceedings, in our opinion
13 such a right does not extend to interim rate proceedings, at least if the
14 Commission limits the granting of interim rates to situations of true
15 emergency (as discussed at length in answer to Question Four).

16 In a true emergency situation the necessity for giving a public
17 service corporation interim rate relief would, in our opinion, outweigh any
18 person's right to be heard in rate proceedings⁸¹

11 5. Resolution

12 a. Inappropriate application of the WAS

13 The evidence provided in this matter does not show that the WAS tariff was inappropriately
14 applied in this matter, to the extent that the WAS tariff calculations were performed in a manner
15 substantially consistent with the App. WAS tariff approved in Decision No. 71902 and with its less
16 clear counterparts, the 1st, 2nd, and 3rd WAS tariffs. Rather, it shows that the WAS tariff was
17 applied in the manner intended, to the extent possible. As approved, the WAS tariff required Payson
18 to determine the total documented water augmentation costs incurred for a month, to divide that total
19 by the total amount of water sold for the month to obtain a surcharge amount per thousand gallons, to
20 apply that surcharge amount to each water customer's consumption for the month, and to bill the
21 result as a separate line item on the customer's bill. Payson was not permitted to include any
22 administrative costs or profits in the WAS, only documented costs.

23 The documents presented to calculate the hauling costs for the period from May 23 through
24 July 3, 2011, although representing a period longer than one month, were appropriately grouped
25 together. The Town's billing period ran from May 23 through June 23, 2011, with billing on June 28,
26 2011, and did not coincide completely with Payson's July 2011 billing period, which covered usage
27 from June 16 through July 16, 2011. In light of the differences in the billing periods, it was just and

28 ⁸¹ AG Op. 71-17 at 6-7.

1 reasonable for Payson to calculate the WAS in the manner it did, using the Town invoice for usage in
 2 the period ending June 23, 2011; the Pearson hauling invoices for hauling completed between June 7
 3 and July 3, 2011; and customer water usage data for the period from June 16 through July 16, 2011.
 4 Likewise, it was just and reasonable for Payson to calculate the WAS in a similar manner for the
 5 August 2011, September 2011, and October 2011 MDC customer bills.

6 Count 2(a) is not substantiated.

7 b. Inadequate notice of the WAS

8 The record herein shows that MDC customers received notice of the WAS tariff on multiple
 9 occasions before it was implemented, through meetings, mailings, and publication. While the notice
 10 provided was not without errors, as noted above, it provided MDC customers and the public in the
 11 *Payson Roundup* distribution area with sufficient information to become aware that the proceeding
 12 was occurring, that the proceeding could impact MDC customer monthly bills by amounts as high as
 13 \$521.24,⁸² and that the public could participate in the proceeding.

14 In light of the nature of the WAS Docket—emergency interim ratemaking—the only legal
 15 requirement for notice was that created by the Commission in the case through its procedural orders.
 16 The notice provided was sufficient.

17 Count 2(b) is not substantiated.

18 c. Inaccurate consumption numbers to support WAS

19 As noted above, Mr. Smith's calculation of the total consumption numbers for June-July 2011
 20 included an error that resulted in a figure lower than the actual figure supported by the
 21 documentation. The documentation provided, and compared by Mr. Smith in his testimony at
 22 hearing, is actually consistent, although the numbers are presented in a different order in the two
 23 exhibits. Count 2(c) is not substantiated.

24 d. Water hauled from MDC to EVP

25 The evidence establishes that water was hauled from the bulk fire hydrant meter behind the
 26 Home Depot in Payson to the EVP system on four separate occasions when water was also being

27 _____
 28 ⁸² This was an error, as it coincided to the amount for 15,000 gallons rather than 10,000 gallons in Staff's bill impact analysis, but this higher amount would only have resulted in more public interest.

1 hauled to MDC. There is insufficient evidence, however, to indicate that water was also being hauled
2 from MDC to EVP during the summer 2011 period. While individuals provided their opinions that
3 such was the case, those opinions were based solely on observations concerning the location and
4 appearance of tanker trucks, as opposed to actual knowledge of the circumstances or more concrete
5 observations. Additionally, only one of those individuals was a witness who appeared at a hearing
6 and was subjected to cross examination.

7 Count 2(d) is not substantiated.

8 e. MDC charged for water purchased and hauled to EVP

9 As shown in Exhibit 4, the evidence establishes that when the WAS calculated, deductions
10 were made to exclude the cost of water purchased from the Town for EVP. There is no evidence to
11 establish that the customers of MDC were required to pay, through the WAS, for the water purchased
12 and hauled to EVP.

13 Count 2(e) is not substantiated.

14 f. MDC charged hauling charges (travel time) for water hauled to EVP

15 The evidence establishes that only MDC was charged travel time on the four separate
16 occasions when water was hauled to both MDC and EVP. On each occasion, Pearson charged MDC
17 \$600 for the round trip travel between Williams and Payson. Thus, MDC was charged a total of
18 \$2400 in travel time, while EVP was charged \$0. Count 2(f) is substantiated.

19 **6. Remedy**

20 Although it was Pearson that attributed the travel time to MDC rather than to MDC and EVP,
21 Payson should have noticed the imbalance in the invoices and split the travel time equally between
22 the two. An equal division of the travel time charges is appropriate because either MDC or EVP
23 would have had to pay the entire travel time charge if it alone had been receiving hauling services,
24 and the travel time charges are not influenced in any way by how much water is actually hauled; they
25 are \$600 each time.

26 It is reasonable and appropriate for the MDC customers to be credited for the \$1200
27 overcharge, with interest from the July 22, 2011, MDC billing date to December 1, 2015, for a total
28 of \$1,422.48. To ensure that each account is credited an amount as equivalent as possible to the

1 amount that each customer account was overcharged, the credit should be distributed to each
 2 customer account that paid the WAS, on a pro rata basis determined based upon the customer's usage
 3 billed in July, August, and September 2011. Specifically, Payson should be required to (1) calculate
 4 MDC's average total consumption for the July, August, and September 2011 billings; (2) divide
 5 \$1,422.48 by the average total consumption calculated, to determine the credit to be applied per
 6 gallon; (3) average each MDC customer account's usage billed in the July, August, and September
 7 2011 billings; and (4) credit each customer account the amount reached by multiplying the average
 8 account usage by the credit to be applied per gallon. To the extent that any account billed in July-
 9 September 2011 is no longer active, the account's usage should be disregarded in the average total
 10 consumption calculation so that the credit amount otherwise attributable to the account is distributed
 11 among the remaining accounts.

12 The evidence does not establish that Payson overcharged MDC customers under the WAS
 13 tariff fraudulently or with any other form of malice. We conclude that Payson should not be assessed
 14 penalties for the Count 2 violations. In reaching this conclusion, we are again cognizant that Payson
 15 is under completely different ownership and management than it was at the time of the events
 16 recounted in the Complaint.

17 * * * * *

18 Having considered the entire record herein and being fully advised in the premises, the
 19 Commission finds, concludes, and orders that:

20 **FINDINGS OF FACT**

21 1. Payson is an Arizona public service corporation providing water utility service to eight
 22 independent water systems in Gila County, including both MDC and EVP.

23 2. From 1996 through May 31, 2013, Payson was wholly owned by Brooke and
 24 controlled by Mr. Hardcastle.

25 3. Since June 1, 2013, Payson has been owned by JW and managed by Mr. Williamson.

26 4. Brooke and Mr. Hardcastle no longer have any interest in or affiliation with Payson.

27 5. At the times relevant to the Complaint, Mr. Smith resided in the MDC service area in
 28 a home that he and his wife rented from its owner, Joanna Hutchison.

1 6. According to Payson's records, Ms. Hutchison is the customer for the account
2 associated with Mr. Smith's residence, although Payson sends the bills to Ms. Hutchison "c/o Alan
3 Smith" at Mr. Smith's residence.

4 7. Mr. Smith pays the Payson bills in cash at a local APS office.

5 8. On September 28, 2010, in Decision No. 71902, the Commission approved the WAS
6 for MDC as an emergency interim rate increase, with the WAS to be effective from May 1 through
7 September 30 of each following year from the effective date of Decision No. 71902 until permanent
8 rate relief was granted by the Commission, and approved a revised Curtailment Tariff for MDC.

9 9. On June 7, 2011, Payson read the water meter at Mr. Smith's home and determined
10 that daily water consumption use for the home needed to be reduced by 33 gallons to avoid a
11 violation of Payson's Curtailment Tariff. Payson placed a Warning Notice, with a disconnection date
12 of June 8, 2011, in Mr. Smith's meter box and did not otherwise attempt to inform Mr. Smith or his
13 wife of the Warning Notice.

14 10. On June 8, 2011, the water service to Mr. Smith's home was disconnected at
15 approximately 9:15 a.m., and Mr. Smith discovered the Warning Notice and a lock on the valve at
16 approximately 4:00 p.m.

17 11. The Hutchison account was charged a \$200 reconnection fee to have the water turned
18 back on.

19 12. Mr. Smith paid the \$200 reconnection fee in the APS office on the afternoon of June
20 10, 2011.

21 13. Water service to Mr. Smith's home was not reconnected until approximately 3:00 p.m.
22 on June 14, 2011.

23 14. Between December 13, 2011, and January 20, 2012, the Hutchison account was
24 credited \$200 for the reconnection fee.

25 15. The bills from the Hutchison account show that the account was charged a total of
26 \$163.43 in WAS for the period from June 16, 2011, through October 16, 2011, with the following
27 monthly breakdown:
28

Service Dates:	6/16/11 - 7/16/11	7/16/11 - 8/17/11	8/17/11 - 9/16/11	9/16/11 - 10/16/11
End Read:	269060	273900	280280	288590
Beginning Read:	264090	269060	273900	280280
Gallons Used:	4970	4,840	6380	8310
WAS Rate per Gallon:	\$0.01360	\$0.00590	\$0.00820	\$0.00180
WAS Charged:	\$67.59	\$28.56	\$52.32	\$14.96

16. Mr. Smith filed the Complaint against Payson/Brooke on January 10, 2012.

17. Mr. Smith's Complaint, which was permitted to evolve and broaden during this matter without formal amendment, and which has been organized into Counts and subcounts for ease of reference, makes the following allegations:

(a) Count 1: Payson violated the terms and conditions set forth by Decision No. 71902, "through a fraudulent and deceitful method," (a) by applying its Curtailment Tariff to all water usage instead of only outdoor water usage, (b) by disconnecting Mr. Smith's water service without providing valid prior notification, and (c) by overcharging Mr. Smith through Payson error in reading Mr. Smith's meter.

(b) Count 2: Payson's WAS tariff was implemented unfairly and improperly because: (a) Payson inappropriately applied the WAS, resulting in overcharges to MDC customers; (b) Payson provided inadequate notice of the WAS to MDC; (c) Payson provided Staff inaccurate consumption numbers to support the WAS; (d) Payson had MDC water hauled from MDC to EVP; (e) Payson charged MDC for water purchased for EVP; and (f) Payson charged MDC the hauling charges (specifically the travel time) for water hauled to EVP.

18. While Mr. Smith's Complaint sought extensive relief, as described in the Discussion section of this Decision, Mr. Smith ultimately sought a refund of all money paid out for the termination and reconnection of water service; refunds to the MDC customers for what they were overcharged under the WAS; \$25,000 for Mr. Smith as compensation for his legal fees (asserted to be \$4,000, of which he had paid \$2,000) and his time spent on this matter; and a change that would result in customers' being able to find out what they are paying for, as he believed that the costs of the water hauling were not made clear.

19. The procedural history for this matter was as described in the Discussion section of

1 this Decision.

2 20. An evidentiary hearing for this matter was held before a duly authorized
3 Administrative Law Judge of the Commission on January 15 and 30, 2015.

4 21. The evidentiary record for this matter incorporates the evidentiary record from the
5 Gehring Docket.

6 22. The Curtailment Tariff does not exempt indoor water usage from maximum daily use
7 restrictions.

8 23. Count 1(a) is not substantiated.

9 24. The Curtailment Tariff requires Payson to provide a customer notice of the customer's
10 violation of the Curtailment Plan at least 24 hours before disconnecting the customer's service, by
11 delivery of a written notice to the customer's door, electronic mail to the customer, or any other
12 reasonable means of notification.

13 25. A.A.C. R14-2-410(F) requires a utility to take specific actions before the utility
14 disconnects service to an address where the utility knows that a landlord/tenant relationship exists
15 and that the landlord is the customer of the utility and would otherwise be subject to disconnection of
16 service.

17 26. The notice provided to Mr. Smith's home before water service was disconnected
18 consisted of a written notice left in his home's meter box.

19 27. Leaving a notice in a home's meter box is not a reasonable form of providing notice.

20 28. Mr. Smith's home did not receive 24-hour notice of violation of the Curtailment Plan
21 before Payson disconnected service, as required by the Curtailment Tariff.

22 29. Payson did not provide notice or otherwise follow the requirements of A.A.C. R14-2-
23 410(F) before disconnecting service.

24 30. Count 1(b) is substantiated.

25 31. On May 16, 2011, Payson misread the meter at Mr. Smith's home as showing 267,340
26 gallons, representing monthly usage of 8,060 gallons for the period from April 16, 2011, through
27 May 16, 2011.

28 32. On June 16, 2011, Payson read the meter at Mr. Smith's home as showing 264,090

1 gallons, representing usage of negative 3,250 gallons for the period from May 16, 2011, through June
2 16, 2011.

3 33. In the bill issued by Payson for the Hutchison account on June 22, 2011, Payson
4 provided a credit of \$6.29 for the negative usage, representing 3,250 gallons at \$0.00193 per gallon.

5 34. While the actual usage rate for the Hutchison account as of May 16, 2011, is not
6 known because of the meter misread, the account's average daily rate for the previous month would
7 have resulted in monthly usage of 4,394 gallons.

8 35. If monthly usage of 4,394 gallons is assumed for the period from April 16, 2011,
9 through May 16, 2011, the Hutchison account was overcharged for 3,666 gallons that were not used,
10 all at the second-tier commodity rate, for a total of \$10.96 plus tax and a grand total of \$11.80. As a
11 result, the Hutchison account was under-credited by \$5.51.

12 36. Count 1(c) is substantiated.

13 37. A.R.S. § 40-248(A) authorizes the Commission to order a public service corporation
14 to make reparation to a complainant, with interest at the legal rate from the date of collection,
15 provided no discrimination will result.

16 38. Under A.R.S. § 44-1201(B), the legal interest rate currently and for the periods at
17 issue in this matter is 4.25 percent.

18 39. Payson should be required to credit the Hutchison account for interest on the \$200
19 reconnection charge between the date it was paid (June 10, 2011) and the date by which it was
20 credited to the account (January 20, 2012), which amounts to \$5.22.

21 40. Payson should be required to credit the Hutchison account for the uncredited
22 overcharge amount of \$5.51, with interest from the date of payment (June 10, 2011) to December 1,
23 2015, which amounts to \$6.56.

24 41. Payson should be required to amend its Curtailment Tariff (1) to clarify that a notice
25 of violation of the Curtailment Plan must be provided to a customer's service location by personally
26 delivering the notice to an apparently responsible adult living or working at the service location,
27 depositing the notice into the mailbox for the service location (on any day except Sunday or a federal
28 holiday), or posting the notice on the main doorway or garage door of the service location; (2) to

1 clarify that service may not be disconnected for a violation of the Curtailment Plan until at least 24
2 hours have passed since the notice of violation was provided at the customer's service location in
3 accordance with these requirements; and (3) to require compliance with A.A.C. R14-2-410(F) when
4 an account involves a landlord-tenant arrangement.

5 42. The Commission's rules for water utilities do not impose a requirement for how
6 quickly a customer's payment must be credited to the customer's account and do not require a water
7 utility to provide for any payment methods other than in person or mailed payment to the utility's
8 office or to its agent.

9 43. The delay between the time that Mr. Smith paid the \$200 reconnection fee and the
10 time that the payment was credited to the Hutchison account resulted in the water to Mr. Smith's
11 home being disconnected for four days after payment was made.

12 44. Payson should be required to provide the Commission a report describing the payment
13 methods currently available to its customers; stating how quickly payments are credited to customer
14 accounts with each method; analyzing the feasibility and costs and benefits of establishing additional
15 payment methods or altering current payment methods to ensure that each payment made in cash to
16 an authorized agency or made electronically or by telephone using a credit card is credited to a
17 customer's account within 24 hours after the payment is made; and describing Payson Water Co.,
18 Inc.'s plan to improve the speed with which customer payments are credited to customer accounts.

19 45. Staff should be required to review and analyze Payson's report and to provide any
20 recommendations that Staff has concerning Payson's current payment methods and its plan to
21 improve the speed with which customer payments are credited to customer accounts and, further,
22 providing any Staff recommendations regarding whether rulemaking should be pursued to amend the
23 Commission's rules related to payment methodologies for water utility service.

24 46. The evidence provided does not establish that Payson violated the Curtailment Tariff,
25 Decision No. 71902, or A.A.C. R14-2-410 through a fraudulent and deceitful method or with any
26 other form of malice.

27 47. Exhibit 1 summarizes, for the period from May 27, 2011, through October 26, 2011,
28 and for both MDC and EVP, the evidence regarding water purchases from the Town, hauling

1 activities by Pearson, and the costs associated with each.

2 48. During the period shown in Exhibit 1, Payson purchased water from the Town for both
3 MDC and EVP.

4 49. Payson obtained the water from the Town through a bulk water hydrant meter that the
5 Town installed upon Payson's request in a location behind a Home Depot located in the Town.

6 50. Payson hired Pearson to haul the water purchased from the Town to MDC and to EVP
7 using tanker trucks.

8 51. Pearson charged for hauling at a rate of \$150 per hour and also charged for travel time
9 between Williams and the Town at a rate of \$600 per hauling period.

10 52. Pearson's hauling logs show actual or approximate meter readings for each load
11 hauled and actual meter readings for the beginning and ending of each hauling period.

12 53. On four separate occasions, as shown in Exhibit 1, Pearson hauled water to both MDC
13 and EVP during the same hauling period.

14 54. Pearson billed Payson/Brooke separately for the MDC and EVP hauling activities.

15 55. Before Payson was permitted to bill MDC customers for the WAS, Staff reviewed and
16 scrutinized all of the documentation used to calculate the WAS and approved the WAS calculation.

17 56. As approved in Decision No. 71902, the WAS tariff required Payson to determine the
18 total documented water augmentation costs incurred for a month; to divide that total by the total
19 amount of water sold for the month, obtaining a surcharge amount per thousand gallons; to apply that
20 surcharge amount to each customer's consumption for the month; and to bill the result as a separate
21 line item on the customer's bill.

22 57. Payson performed the WAS calculations in a manner substantially consistent with the
23 WAS tariff approval in Decision No. 71902. The method of calculation varied only in that the time
24 periods used to determine the different variables did not match perfectly due to billing period
25 differences.

26 58. It was just and reasonable for Payson to perform the WAS calculations in the manner
27 that it did, due to the differences in billing periods associated with the variables.

28 59. Count 2(a) is not substantiated.

1 60. While Payson's application in the WAS Docket was pending, public notice of the
2 WAS proceeding was twice mailed to MDC customers and twice published in the *Payson Roundup*,
3 with the second of each type of notice including estimated customer bill impacts ranging from \$35.72
4 to \$521.24, depending on the quantity of water hauled to MDC and the customer's own usage. Each
5 public notice referred to the ability of interested persons to participate in the WAS proceeding or
6 provided specific information on how an interested person could participate.

7 61. In April 2010, while its application in the WAS Docket was pending, Payson held four
8 separate meetings to inform MDC customers of the proposed WAS and the proposed changes to the
9 Curtailment Tariff.

10 62. The notice provided concerning the WAS Docket proceeding was sufficient.

11 63. Count 2(b) is not substantiated.

12 64. The MDC customer consumption figures used to calculate the WAS for the July 2011
13 bill were the same customer consumption figures provided to Staff in 2012 in response to a data
14 request made in the Gehring Docket, although the two sets of figures were organized differently.

15 65. Count 2(c) is not substantiated.

16 66. Although several individuals opined that water from MDC storage tanks was hauled to
17 EVP, the evidence presented failed to establish that this occurred.

18 67. Count 2(d) is not substantiated.

19 68. The cost of water purchased from the Town for EVP was not included in the WAS
20 billed to or paid by MDC customers.

21 69. Count 2(e) is not substantiated.

22 70. During the four hauling periods when both MDC and EVP received water, Pearson
23 charged MDC a total of \$2,400.00 for travel time and did not charge EVP for travel time.

24 71. Count 2(f) is substantiated.

25 72. Because either MDC or EVP would have been required to pay the full travel time if
26 either had been the only system to receive hauling during a hauling period, the travel time for the four
27 hauling periods when both received hauling should have been divided equally between the two.

28 73. MDC customers were overcharged \$1,200.00 in travel charges and should be credited

1 for this overcharge, with interest from the July 22, 2011, MDC billing date to December 1, 2015, for
2 a total of \$1,422.48. To make the credit to each account as equivalent as possible to the amount that
3 each customer account was overcharged, Payson should (1) calculate MDC's average total
4 consumption for the July, August, and September 2011 billings; (2) divide \$1,422.48 by the average
5 total consumption calculated, to determine the credit to be applied per gallon; (3) average each MDC
6 customer account's usage billed in the July, August, and September 2011 billings; and (4) credit each
7 customer account the amount reached by multiplying the average account usage by the credit to be
8 applied per gallon. To the extent that any accounts billed in July through September 2011 are no
9 longer active, the account usage should be disregarded in the total consumption calculation so that the
10 credits otherwise attributable to the account are distributed among the remaining accounts.

11 74. The evidence does not establish that Payson overcharged MDC customers under the
12 WAS tariff fraudulently or with any other form of malice.

13 75. Arizona Constitution Article 15, § 19 and A.R.S. §§ 40-424 and 40-425 authorize the
14 Commission to impose penalties upon a public service corporation for failure to comply with any
15 provision of the Arizona Constitution; A.R.S. Title 40, Chapter 2; or any Commission decision,
16 order, or rule. Under A.R.S. § 40-423(B), such penalties are payable to the State.

17 76. Payson should not be assessed penalties in this matter.

18 CONCLUSIONS OF LAW

19 1. Payson is a public service corporation pursuant to Article 15 of the Arizona
20 Constitution and A.R.S. Title 40.

21 2. Mr. Smith, as a person, was authorized to make a complaint against Payson under
22 A.R.S. § 40-246.

23 3. The Commission has jurisdiction over Payson and the subject matter of this matter.

24 4. Notice of this matter was provided in accordance with the law.

25 5. Regarding the Counts of the Complaint, we conclude as follows:

26 (a) Count 1(a) is not substantiated,

27 (b) Count 1(b) is substantiated,

28 (c) Count 1(c) is substantiated,

- (d) Count 2(a) is not substantiated,
- (e) Count 2(b) is not substantiated,
- (f) Count 2(c) is not substantiated,
- (g) Count 2(d) is not substantiated,
- (h) Count 2(e) is not substantiated, and
- (i) Count 2(f) is substantiated.

6. When the Commission investigation of a complaint finds that a public service corporation has made an excessive or discriminatory charge, the Commission is legally authorized, under A.R.S. § 40-248(A), to require the public service corporation to pay the complainant reparations, with interest at the legal rate from the date of collection.

7. Under A.R.S. § 44-1201(B), the legal rate of interest at all times at issue herein was 4.25 percent.

8. It is just and reasonable and in the public interest to require Payson to make the reparations described in Findings of Fact Nos. 39, 40, and 73.

9. It is just and reasonable and in the public interest to require Payson to take the actions described in Findings of Fact Nos. 41 and 44.

10. It is just and reasonable and in the public interest to require Staff to take the action described in Findings of Fact No. 45.

11. Under Article 15, § 19 of the Arizona Constitution and A.R.S. §§ 40-424 and 40-425, the Commission has authority to impose monetary penalties upon a public service corporation for failure to comply with any provision of the Arizona Constitution; A.R.S. Title 40, Chapter 2; or any Commission decision, order, or rule. Under A.R.S. § 40-423(B), such penalties are payable to the State.

12. The Commission is not legally authorized to award damages to a complainant.

13. The evidentiary record for this matter does not establish that Payson behaved in a fraudulent manner or with any other form of malice.

14. It is just and reasonable and in the public interest not to impose penalties upon Payson in this matter.

ORDER

IT IS THEREFORE ORDERED, as to J. Alan Smith's Complaint against Payson Water Co., Inc., that:

- Count 1(a) is not substantiated and is dismissed with prejudice,
- Count 1(b) is substantiated,
- Count 1(c) is substantiated,
- Count 2(a) is not substantiated and is dismissed with prejudice,
- Count 2(b) is not substantiated and is dismissed with prejudice,
- Count 2(c) is not substantiated and is dismissed with prejudice,
- Count 2(d) is not substantiated and is dismissed with prejudice,
- Count 2(e) is not substantiated and is dismissed with prejudice, and
- Count 2(f) is substantiated.

IT IS FURTHER ORDERED that Payson Water Co., Inc. shall, within 30 days after the effective date of this Decision, credit Joanna Hutchison's account in the amount of \$5.22, which represents the interest on the \$200 reconnection charge between the date the charge was paid (June 10, 2011) and the date by which it was credited to the account (January 20, 2012).

IT IS FURTHER ORDERED that Payson Water Co., Inc. shall, within 30 days after the effective date of the Decision, credit Joanna Hutchison's account in the amount of \$6.56, which represents the uncredited overcharge amount of \$5.51, with interest from the date of payment (June 10, 2011) to December 1, 2015.

IT IS FURTHER ORDERED that Payson Water Co., Inc. shall, within 30 days after the effective date of this Decision, file with the Utilities Division, for approval, an amended Curtailment Tariff that (1) clarifies that a notice of violation of the Curtailment Plan must be provided to a customer's service location by personally delivering the notice to an apparently responsible adult living or working at the service location, depositing the notice into the mailbox for the service location (on any day except Sunday or a federal holiday), or posting the notice on the main doorway or garage door of the service location; (2) clarifies that service may not be disconnected for a violation of the Curtailment Plan until at least 24 hours have passed since the notice of violation was

1 provided at the customer's service location in accordance with these requirements; and (3) requires
2 compliance with A.A.C. R14-2-410(F) when an account involves a landlord-tenant arrangement.

3 IT IS FURTHER ORDERED that Payson Water Co., Inc. shall, within 60 days after the
4 effective date of this Decision, file with the Commission's Docket Control, as a compliance item
5 herein, a report describing the payment methods currently available to its customers; stating how
6 quickly payments are credited to customer accounts with each method; analyzing the feasibility and
7 costs and benefits of establishing additional payment methods or altering current payment methods to
8 ensure that each payment made in cash to an authorized agency or made electronically or by
9 telephone using a credit card is credited to a customer's account within 24 hours after the payment is
10 made; and describing Payson Water Co., Inc.'s plan to improve the speed with which customer
11 payments are credited to customer accounts.

12 IT IS FURTHER ORDERED that the Commission's Utilities Division shall, within 90 days
13 after the payment method report is filed, review the report and file in this Docket a Staff Report
14 providing Staff's analysis of the information provided in the payment method report and any
15 recommendations that Staff has concerning Payson Water Co., Inc.'s current payment methods and
16 its plan to improve the speed with which customer payments are credited to customer accounts and,
17 further, providing any Staff recommendations regarding whether rulemaking should be pursued to
18 amend the Commission's rules related to payment methodologies for water utility service.

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1 IT IS FURTHER ORDERED that Payson Water Co., Inc. shall, within 60 days after the
2 effective date of this Decision, credit the accounts of Mesa del Caballo system customers in the
3 cumulative amount of \$1,422.48, using the methodology described in Findings of Fact No. 73.

4 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

6
7
8 CHAIRMAN

COMMISSIONER

9
10 COMMISSIONER

COMMISSIONER

COMMISSIONER

11
12 IN WITNESS WHEREOF, I, JODI JERICH, Executive
13 Director of the Arizona Corporation Commission, have
14 hereunto set my hand and caused the official seal of the
15 Commission to be affixed at the Capitol, in the City of Phoenix,
16 this _____ day of _____ 2015.

17 JODI JERICH
18 EXECUTIVE DIRECTOR

19 DISSENT _____

20 DISSENT _____
21 SH:ru

1 SERVICE LIST FOR: PAYSON WATER CO., INC.

2 DOCKET NO.: W-03514A-12-0007

3

4 J. Alan Smith
600 South Oak Street, Space 4
Payson, AZ 85541

5

6 Jason Williamson, President
PAYSON WATER CO., INC.
7581 East Academy Boulevard, Suite 229
Denver, CO 80230

7

8 Janice Alward, Chief Counsel
Legal Division

9

ARIZONA CORPORATION COMMISSION
1200 West Washington Street
Phoenix, AZ 85007

10

11 Thomas Broderick, Director
Utilities Division
12 ARIZONA CORPORATION COMMISSION
1200 West Washington Street
13 Phoenix, AZ 85007

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Exhibit 1: Water Purchase and Hauling Information, 12-0007

Bill/Invoice Date	Town Meter Reading	Gallons Purchased from Town	Bill from Town	Hauling Log Start Reading	Hauling Log End Reading	Difference (Gallons)	Pearson Hauling Invoice #	Hours Billed	Amount Billed for Hauling	Amount Billed for Travel	Total Amount Billed	System Noted	Hauling Date/s
5/27/11	599,000	0	\$23.82										
6/13/11				599100 ¹	665500	66400	8803	11	\$1,650.00	\$600.00	\$2,250.00	MDC	6/7/11-6/8/11
6/21/11				665500	734400	68900	8804	20	\$3,000.00	\$600.00	\$3,600.00	MDC	6/19/11-6/20/11
						135300					\$5,850.00		
6/28/11	734,400	135,400	\$863.77										
6/30/11				734400	786000	51600	8807	15	\$2,250.00	\$600.00	\$2,850.00	MDC	6/24/2011
7/14/11				786000	845990	59990	8812	17	\$2,550.00	\$600.00	\$3,150.00	MDC	6/29/11-6/30/11
7/7/11				845900	898000	52100	8808	16	\$2,400.00	\$600.00	\$3,000.00	MDC	7/3/2011
				911100	924000	12900	8808						
						176590							
7/7/11				898000	911100	13100	8809	4	\$600.00	\$0	\$600.00	EVP	Not noted
						189690							
7/14/11							8811 ²		\$1,050.00		\$1,050.00	MDC	6/7/11-6/8/11
											\$10,050.00		
7/27/11	924,100	189,700	\$1,221.59										
8/16/11				924100	990672	66572	8815	18	\$2,700.00	\$600.00	\$3,300.00	MDC	8/4/11-8/5/11
8/16/11				990600 ³	1050500	59900	8816	19	\$2,850.00	\$600.00	\$3,450.00	MDC	8/11/11-8/12/11
				1056500	1062300	5800	8816				\$6,750.00		
						132272							
8/16/11				1050500	1056500	6000	8817	6	\$900.00	\$0	\$900.00	EVP	8/11/11-8/12/11
				1062300	1068300	6000	8817						
						12000							
						144272							
9/14/11 ⁴	1,068,300	144,200	\$921.77										
8/30/11				1068300	1128000	59700	8819	14	\$2,100.00	\$600.00	\$2,700.00	MDC	8/24/11-8/25/11
9/7/11				1128000	1187400	59400	8822	16	\$2,400.00	\$600.00	\$3,000.00	MDC	8/31/11-9/1/11 ⁵
9/7/11				1187400	1217000	29600	8823	13	\$1,950.00	\$600.00	\$2,550.00	MDC	9/5/11
				1241000	1264800	23800	8823				\$8,250.00		

The italicized numbers represent gaps in hauling logs for MDC, which coincide with Pearson Hauling invoices for EVP (shown in bold), but for which hauling logs for EVP were not produced.

- Sources: Smith Ex. C-8 at 5-7, 10-11, 13-14, 16-17, 19-20, 22-23, 25-26, 28, 30-31, 33, 35-37, 39-40; Smith Ex. C-4 at 31-34, Smith Ex. C-11.

EXHIBIT 2

		Revised	SHEET NO.	
Payson Water Co., Inc.		Revised	SHEET NO.	
	Mesa Del Caballo Water System (PWS 04-030)			
	(Name of Service Area)			

WATER AUGMENTATION SURCHARGE**MESA DEL CABALLO WATER SYSTEM (PWS 04-030)**

Payson Water Co., Inc. ("Company") is authorized to make monthly adjustments to its rates and charges for water service to recover costs incurred for bulk water purchases and related transportation ("Water Augmentation Surcharge") for service to its Mesa del Caballo water system (PWS 04-030) located in Payson, Gila County, Arizona ("Water System").

The Water Augmentation Surcharge shall be calculated by dividing the total Water Augmentation Costs incurred in a calendar month by the total amount of water sold to its customers for the same period. The resulting rate per 1,000 gallons of water will then be multiplied by the gallons used in the same period for each customer to determine the surcharge amount per 1,000 gallons. The resulting Water Augmentation Surcharge will be charged to Water System customers in the immediately following period as a separate line item on the customer's water bill.

The Commission recognizes that operational decisions regarding water supply management should be left within the discretion of the Company and that deficient water supply conditions sometimes require the Company to concurrently augment its primary water supplies to meet customer demand. The foregoing notwithstanding, the Company shall undertake reasonable efforts to maximize the quantity of water obtained from its groundwater sources as a primary source of supply.

ISSUED:			EFFECTIVE:	
	Month Day Year			Month Day Year
		ISSUED BY: Robert T. Hardcastle		
		3101 State Road		
		Bakersfield, CA 93308		
		Decision No.		

DECISION NO. _____

EXHIBIT 3

PUBLIC NOTICE**PAYSON WATER COMPANY MESA DEL CABALLO SYSTEM
DOCKET NOS. W-03514A-10-0116 WATER AUGMENTATION SURCHARGE
TARIFF AND W-03514A-10-0117 CURTAILMENT TARIFF (CONSOLIDATED)****Summary**

On March 31, 2010, Payson Water Company ("PWC" or "Company") filed with the Arizona Corporation Commission ("Commission") an application for the emergency implementation of a water augmentation surcharge for customers served by its Mesa del Caballo ("MDC") water system due to potential water shortages during the summer season. Concurrently, the Company also filed an application for proposed changes to its Curtailment Tariff for the MDC System, which contains specific requirements as to when water augmentation will be necessary. An evidentiary hearing was held on May 18, 2010.

This notice is being sent to provide customers more information about the potential size of the water augmentation surcharge based on the amount of water being used.

Proposed Water Augmentation Surcharge

The Company has proposed a water augmentation surcharge intended to collect costs for water augmentations made during the previous month – all pass-through costs. Each charge will be determined by taking the total monthly cost, and pro-rating the surcharge to each specific customer (currently 375) based on that customer's total consumption for the month in which water augmentation is necessary. As currently proposed, those customers who use more water will pay a larger proportionate share of water augmentation costs than those customers who used less water.

If the surcharge had been in effect from between May and September of 2009, when water hauling was necessary to augment the water supply, **a typical customer with a median usage of 3,621 gallons per month would have seen an increase of approximately \$16.50 on each monthly bill.** Please note that the Company is NOT seeking recovery of 2009 water hauling expenses.

EXEMPTION: Under the Company proposed revisions to the existing Curtailment Tariff, customers who use 4,000 gallons or less per month based on a twelve(12) month rolling average – though still encouraged to reduce water use – will not be subject to mandatory reduction in daily use requirements under Stages 3, 4, and 5. However, all other restrictions during mandatory conservation periods will still apply.

It is difficult to identify how a water augmentation surcharge will affect you, the individual customer, because it will be tied specifically to the amount of water used. However, the following table provides a range of the estimated surcharge costs, based on water usage and the amount of water augmentation necessary, each month. **The last column (100% hauled water) represents a worst-case scenario in the event the**

Company is required to haul every drop of water to its Mesa del Caballo system from somewhere other than Company wells or water obtained through well sharing agreements. PWC does not anticipate that it will ever be required to haul 100% of water being served to customers in the Mesa del Caballo system.

Surcharge Cost Estimates

<u>Water Use</u>	<u>25% hauled water</u>	<u>50% hauled water</u>	<u>100% hauled water</u>
2,000 gpd	\$ 35.72	\$ 51.60	\$ 83.36
3,621 gpd	51.70	80.47	137.97
5,000 gpd	65.30	105.01	184.41
10,000 gpd	118.36	195.08	521.24

How You Can View or Obtain a Copy of the Surcharge Tariff Application and Curtailment Tariff

If you have any questions about these applications, you may contact the Company at Brooke Utilities, P.O. Box 82218, Bakersfield, California 93380.

Copies of the applications are available from PWC by contacting its Call Center at (800) 270-6084 and providing your mailing address and/or email address, and on the Internet via the Commission's website (www.azcc.gov) using the e-docket function.

Arizona Corporation Commission Public Hearing Information

The Commission held a public hearing on this matter on May 18, 2010, at the Commission's offices in Phoenix, Arizona. Any written public comments may be submitted to the record by mailing a letter referencing Docket Nos. W-03514A-10-0116 and W-03514A-10-0117 to the Arizona Corporation Commission, Consumer Services Section, 1200 West Washington Street, Phoenix, Arizona 85007, or by e-mail. For a form to use and instructions on how to e-mail comments to the Commission, go to <http://www.azcc.gov/divisions/utilities/forms/complaintform.pdf>.

About Intervention

Any person or entity entitled by law to intervene and having a direct and substantial interest in the matter will be permitted to intervene. The deadline for filing a written motion to intervene has been extended to **June 25, 2010**. If you wish to intervene, you must file an original and 13 copies of a written motion to intervene with the Commission no later than **June 25, 2010**. Also send a copy of the motion to PWC or its counsel and to all parties of record. Your motion to intervene must contain the following:

1. The name, address and telephone number of the proposed intervenor and of any person upon whom service of documents is to be made if different than the intervenor;

2. A short statement of the proposed intervenor's interest in the proceeding and whether he/she is requesting that the hearing be re-opened to present evidence and to cross-examine any prior witnesses;
3. A statement certifying that a copy of the Motion to Intervene has been mailed to PWC or its counsel and to all parties of record in the case.

The granting of Motions to Intervene shall be governed by A.A.C. R14-3-105, except that **all Motions to Intervene must be filed on, or before, June 25, 2010.** If representation by counsel is required by Rule 31 of the Rules of the Arizona Supreme Court, intervention will be conditioned upon the intervenor obtaining counsel to represent the intervenor. For information about requesting intervention, visit the Commission's website at <http://www.azcc.gov/divisions/utilities/forms/interven.pdf>. The granting of intervention, among other things, entitles a party to present sworn evidence at hearing and to cross-examine other witnesses. **However, failure to intervene will not preclude any interested person or entity from appearing at the hearing, if it is re-opened, and providing public comment on the applications or from filing written comments in the record of the case.**

ADA/Equal Access Information

The Commission does not discriminate on the basis of disability in admission to its public meetings. Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting the ADA Coordinator, Carolyn Buck, email CDBuck@azcc.gov, voice phone number (602) 542-3931. Requests should be made as early as possible to allow time to arrange the accommodations.

Payson Water Co., Inc.

2011 MdC Water Augmentation Worksheet (DRE 1-1, DRE 1-2)

10-Nov-11

	2011				
	May-June	June-July	July-August	August-September	September-October
Pearson invoice 8803		\$2,250.00			
Pearson invoice 8804		\$3,600.00			
Pearson invoice 8807		\$2,850.00			
Pearson invoice 8808		\$3,000.00			
Pearson invoice 8811		\$1,050.00			
Pearson invoice 8812		\$3,150.00			
Pearson invoice 8815			\$3,300.00		
Pearson invoice 8816			\$3,450.00		
Pearson invoice 8819				\$2,700.00	
Pearson invoice 8822				\$3,000.00	
Pearson invoice 8823				\$2,550.00	
Pearson invoice 8825					\$1,950.00
TOP water supply charges	\$0	\$863.77	\$1,221.50	\$855.86	\$0.00
EVP water supply charges	\$0	\$0.00	(\$83.84)	(\$153.60)	\$0.00
Net water supply charges	\$0.00	\$863.77	\$1,137.66	\$702.26	\$0.00
Total Water Hauling Costs	\$0.00	\$16,763.77	\$7,887.66	\$8,952.26	\$1,950.00
Total Cost per Gallon	\$0.0000000000	\$0.0135813808	\$0.0059548430	\$0.0081922562	\$0.0018231796